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No. 06-333

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In The
Supreme Court of the United States

PHELPS DODGE CORPORATION,

Conditional Cross-Petitioner,

vs.

SAN CARLOS APACHE TRIBE; STATE OF ARIZONA; GILA RIVER INDIAN COMMUNITY; ASARCO LLC; SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT; CITY OF SAFFORD; GILA VALLEY IRRIGATION DISTRICT; FRANKLIN IRRIGATION DISTRICT; SALT RIVER PROJECT; CITY OF GOODYEAR; BHP COPPER INCORPORATED; and UNITED STATES OF AMERICA,

Cross-Respondents.

On Petition For Writ Of Certiorari To The Arizona Supreme Court

GILA RIVER INDIAN COMMUNITY'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the Arizona Supreme Court correctly determine that the *Globe Equity No. 59 Decree*[1] does not preclude the San Carlos Apache Tribe from claiming the right to use water from the tributaries of the mainstem of the Upper Gila River because of *res judicata*?

[1] Consent Decree, *United States v. Gila Valley Irrigation District et al.*, June 29, 1935, Federal District Court in and for the District of Arizona.

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STATEMENT OF FACTS

I. THE *GLOBE EQUITY NO. 59 DECREE*

A. HISTORY OF WATER RIGHTS LITIGATION IN ARIZONA

During the nineteenth century and through the middle of the twentieth century, Arizona was a substantially rural state. The lands in Arizona are largely arid or semi-arid. Early Euro-American settlers wanted to use the limited water supplies for irrigation, mining, and domestic purposes. But, as Mark Twain observed, "Whisky is for drinkin', water is for fightin'." Early water users in Arizona did most of their fighting in a series of small, localized court cases. These cases adjudicated the water rights of a limited number of participants to the use of water from a limited geographic stretch of the Gila River System.

Prior to 1974, with the initiation of what would eventually become the *General Adjudication of All Rights to Use Water in the Gila River System and Source*, the water users and the courts had little ability and less inclination to deal with complex, geographically expansive water rights litigations. The following decrees and decisions, involving small portions of the Gila River watershed, were entered by Arizona courts in multiple counties prior to 1974: the *Kent Decree,* the *Haggard Decree,* the *Benson-Allison Decree*, the *Ling Decree,* the *Lockwood Decree*, the *Doan Decree,* the *Jenkes Decree*, the *Shute Decree*, the *San Pedro Decision*, *Clifford v. Larrieu*, *Hill v. Lenerman*, *Gila Bend Reservoir & Irrigation Co. v. Peoria Canal Co.*, *Gila Land & Cattle Co. v. Gila Water Co.*, *Arlington Canal Co. v. Simpson*, *Gillespie Land & Irrigation Co. v. Simpson*, *Gila Land & Cattle Co. v. Gila Water Co.*, *Dyke v. Caldwell*, *Miller v. Douglas*, *Boquillas Land and Cattle Company v. St. David Cooperative Comm. and Dev. Association*, *Wolf v. Turner*, *Pyeatt v. Huachuca Queen Mining Company*, *Salt River Valley Water Users Association v. Lee*, *Lee and Lee*, *Clarkson and Clarkson v. Wilcox* and the *Globe Equity No. 59 Decree.*

B. THE UNITED STATES' PURPOSE FOR INITIATING THE *GLOBE EQUITY* LITIGATION

Prior to the arrival of Euro-Americans, the *Akimel O'odham* (the River People) and the *Peeposh* (the People), also known as the Pima and Maricopa Indians, had an economic, political, and military confederation the aboriginal territory of which included all of the lands and waters in what is now central Arizona. The Pima and Maricopa Indians were prosperous and healthy. Then Euro-American latecomers moved upstream from the Pima-Maricopa lands and diverted the waters of the Gila and Salt Rivers away – often running the waters into the desert rather than allowing the waters to flow back into the riverbeds and make their way to the Pima-Maricopa lands. The Pima and Maricopa Indians were reduced to poverty, starvation, and endemic diabetes.

The Pima-Maricopa Confederation had allied with the United States Army in the 1850s through 1880s to protect Euro-American settlers from hostile Indian tribes. Despite this loyalty, the United States failed to protect Pima-Maricopa water rights. In 1924, the United State Congress made an effort to partially remedy this serious wrong through passage of the San Carlos Project Act [Pub. L. No. 68-210, 43 Stat. 475-76, June 7, 1924].[2] The Act authorized the construction of Coolidge Dam and water delivery systems to provide water to approximately 50,000 acres of Pima land within the boundaries of the Gila River Indian Reservation. The Act also authorized the participation of certain non-Indians to the extent of 50,000 acres. These non-Indian landowners are participants in the San Carlos Irrigation and Drainage District (SCIDD). The United

[2] "This measure is primarily for the restoration to the Pima Indians of their water rights along the Gila River, which have been gradually taken away from them by the white settlers above them appropriating the waters of the river." Senate Report #129, 6th Congress, 1st Session, Senate Committee on Indian Affairs, February 7, 1924.

States initiated the *Globe Equity* litigation in 1925 to secure a reliable water supply for the 50,000 acres of Pima land and 50,000 acres of non-Indian land within the San Carlos Indian Irrigation Project (SCIIP).

C. THE COMPLAINT AND AMENDED COMPLAINT

The initial complaint in the *Globe Equity* litigation was filed on October 2, 1925. The initial complaint did seem to indicate an intent to seek to quantify the water rights of the mainstem of the Upper Gila River and its tributaries. On May 24, 1934, G. A. Iverson (Special Assistant to the Attorney General) wrote a memorandum[3] to a Mr. Blair explaining the situation that led to filing an original complaint that was too broad. At page 2, he wrote:

> The original Bill of Complaint shows evidence of having been prepared hastily and without proper consideration either as to geographical areas or with any purpose of descriminating [sic] between rights of recognized standing and those apparently in conflict with the interests of the Government.

Beginning in 1926, the federal government questioned having the tributaries included in the *Globe Equity* litigation.[4] On December 5, 1927, the United States filed an amended complaint. See Appendix 2 of Phelps Dodge's Petition for Writ of *Certiorari*. At paragraphs 13(e) and (f) and 14(a), (b) and (c) the amended complaint sought the right to use "waters of the Gila River." Paragraph 15 of the amended complaint stated that each of the defendants

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[3] Memorandum of May 24, 1934, from G. A. Iverson to Mr. Blair, pages 1, 2, 3, 4 and 18 (Appendix 4)

[4] See August 4, 1926, letter from John Truesdell (Superintendent of Irrigation) to Mr. Edward Smith (Special Assistant to the Attorney General) (Appendix 5); September 23, 1926, letter to Mr. Edward Smith (Appendix 6); Letter of October 20, 1926, from Edward Smith to the Attorney General (Appendix 7)

> [c]laims some right to divert *water from the Gila River* as it flows between a line 10 miles east of the parallel to the dividing line between Arizona and New Mexico, and the confluence of the Salt River with the Gila River, *and after the following tributaries of the Gila River*, the San Francisco River, and the San Carlos River, the San Pedro River, and the Santa Cruz River, respectively, have joined, the main stream, and all but a few of said diversions being in the District of Arizona; or the said defendants claim some right to store the water of said river, or of some tributary thereof, either within or above the stretch of the same as just described. [Emphasis added.]

Phelps Dodge Petition for Writ of *Certiorari*, Appendix 2.

On December 6, 1927, the day after filing the amended complaint, the United States filed a brief[5] to the *Globe Equity* Court defining the limited nature and scope of the adjudication:

> This suit is one to adjudicate water rights *within a specified area of the Gila River.* That area is defined in the complaint and roughly embodies the stretch of the river extending from the lower or western end of the Gila River Indian Reservation, up that stream, to a line parallel with the boundary between the States of Arizona and New Mexico, but 10 miles east thereof. The idea is to settle rights of diversion along this stretch of the stream, *excluding*, however, *rights to divert water of the tributaries* – the Salt, which flows into the Gila on the western edge of the Gila River Reservation; the Santa Cruz, which reaches the Gila on the Reservation west of Florence; the San Pedro, which comes into the Gila above the Ashurst-Hayden diversion dam, some 10 miles upstream from Florence; the San Carlos, . . . comes into the Gila on the north within the site . . . the Coolidge reservoir; the San Francisco,

[5] Appendix 8

> which joins . . . also from the north above the Solmonville-Safford . . . below the Duncan Valley; the San Simone [sic], which is an extremely flashy wash stream and comes into the Gila from the south below the Duncan Valley, and all parts of the Gila River proper above the line mentioned as being some 10 miles within the State of New Mexico. [Emphasis added.]

D. PRE-*DECREE* PROCEDURES

Even before filing the amended complaint, which clarified the limited geographic scope of the *Globe Equity* litigation by excluding the tributaries, the United States planned for and executed the dismissal of parties who only diverted water from the tributaries of the mainstem of the Upper Gila River. On April 14, 1927, Edward Smith (Special Assistant to the Attorney General) filed a motion to dismiss certain defendants "without prejudice and without cost . . . for the reason that the said Bosquillas Land and Cattle Company and the San Pedro Water Users' Association are not necessary parties to the action."[6]

The attorneys for the United States kept working to correct the problems that arose from the inadvertent presence in the *Globe Equity* litigation of parties who only diverted water from the tributaries and were, therefore, outside the limited scope of the lawsuit. In 1932, Mr. Morton (attorney for the United States) authored a memorandum in which he wrote:

> It was conceived that the settlement, if effective and adequate, would involve a definition and determination of all existing rights in the Gila River *within the scope of the suit*, and the elimination of all parties who did not belong in the

[6] Appendix 9

> suit but happened to be there by reason of mistakes, inadvertencies or the like which occurred before our advent. [Emphasis added.][7]

On December 29, 1931, John Truesdell (an attorney and engineer who worked on both the *Globe Equity No. 59 Decree* and the *Orr Ditch Decree*) wrote to the attorney for Phelps Dodge Corporation and the Arizona Copper Company. He wrote:

> The geographical limits of the suit were set on the east with the idea that a line drawn from north to south ten miles east of the boundary between New Mexico and Arizona and excluding the tributaries, would include all of the diversions from the stream which ought to be covered by a suit of the sort the Government had in mind. It was considered, when the suit was brought, that diversions from the tributaries and from the main stream above the point indicated were not of such a character as to necessitate their determination. It was thought also that they might not have to be fixed or interfered with at all; and that in all events their handling should be left to the future.[8]

He continued:

> Your clients and others who divert from the tributaries or otherwise *outside the area meant to be covered by the suit*, were made defendants through inadvertence. It is our view, as we have already explained in conversation, that from our standpoint, and we think also from your own, they should be dismissed from the suit, and of course without prejudice. [Emphasis added.][9]

On March 26, 1934, Mr. Truesdell drafted a memorandum for the Commissioner of Indian Affairs and the

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[7] Appendix 10

[8] Appendix 11, page 1

[9] Appendix 11, pages 1 and 2

Solicitor of the Interior Department.[10] At page 1, he wrote: "In trying to settle this suit through the entry of a consent decree it may be necessary to ask the court to dispose of the case, through dismissals without prejudice or by some other means, as to certain parties who will not join in the general consent."

Beginning in late 1934, the United States requested and the Court ordered that water users on all tributaries to the mainstem of the Gila River be dismissed as being "outside the scope of said suit." All of the dismissals were without prejudice.[11] On March 30, 1935, Phelps Dodge Corporation entered into a stipulation with the United States, which was approved by the Court, whereby Phelps Dodge was dismissed from the *Globe Equity* litigation, without prejudice, because the Phelps Dodge interests were "outside the territorial scope of the suit as it was and is defined in the Amended Complaint" and because the dismissed defendants were included in the action "through inadvertence and mistake." *Globe Equity No. 59 Decree*, Article III, pages 8-9.

E. *GLOBE EQUITY NO. 59 DECREE* PROVISIONS

The provisions and language of the *Globe Equity No. 59 Decree* (Appendix 1) explicitly established that the *Decree* dealt only with quantifying the water rights of specific parties, as against each other, to use water from the mainstem of the Upper Gila River. The *Globe Equity No. 59 Decree* unequivocally confirmed that it did not deal with rights to use water from any of the tributaries to the mainstem of the Upper Gila River; and that it did not, in any way, grant or restrict the right of any party (whether to the *Decree* or not) to use the waters of those tributaries.

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[10] Appendix 12

[11] March 30, 1935, Motion to Dismiss (Appendix 13); March 30, 1935, Order Dismissing Certain Defendants (Appendix 14)

The preamble to the *Globe Equity No. 59 Decree* unambiguously affirmed that the *Decree*'s scope was strictly limited to those parties whose claims were still subject to determination, after all the dismissals without prejudice had occurred.

> That the plaintiff and the parties defendant whose claims and rights have been presented by answer or stipulation and remain for determination herein, have concluded and settled all issues in this cause as between plaintiff and said parties defendant, and as between said defendants and each of them and every other thereof, and mutually have agreed – * * * that such settlement should be embodied in and confirmed and made effective by way of the within decree of the Court in this cause defining and adjudicating their claims and rights as against each other in identical form and substance as hereinafter set forth;. . . .

The *Globe Equity No. 59 Decree* incorporated all or part of four smaller, older, localized decrees with even more limited geographic scope. The *Lockwood Decree* quantified water rights for the non-Indian lands that eventually became the San Carlos Irrigation and Drainage District, which is a component part of the San Carlos Indian Irrigation Project. Its table of rights and priorities was incorporated into the *Globe Equity No. 59 Decree*. The *Doan* and *Jenkes Decrees* quantified the water rights of lands diverting from the mainstem of the Upper Gila River above the San Carlos Apache Indian Reservation, and their tables of rights and priorities were also integrated into the *Globe Equity No. 59 Decree*.

The *Ling Decree* quantified the water rights of lands diverting from both the mainstem of the Upper Gila River, above the San Carlos Apache Indian Reservation, and from tributaries of the mainstem of the Upper Gila River. The portions of the tables of rights and priorities from the *Ling Decree* that dealt with rights to divert from the mainstem of the Upper Gila River were incorporated into the *Globe Equity No. 59 Decree*. The portions of the tables

of rights and priorities dealing with rights to divert from the tributaries were not included in the *Globe Equity No. 59 Decree* and must be enforced separately.

Articles I and III of the *Globe Equity No. 59 Decree* contain extensive lists of tributary water users who were dismissed from the litigation, without prejudice, including Phelps Dodge Corporation.[12] The *Globe Equity No. 59*

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[12] "That by the orders of this Court dated January 22, 1929, and March 11, 1930, this suit and the amended complaint herein, upon the motion of plaintiff, were dismissed as to defendants:

[names omitted]

it having been found and determined by the Court in that relation that they and each of them were *not proper or necessary parties defendant* in this cause; which said action of the Court in these premises hereby confirmed." [Emphasis added.] *Globe Equity No. 59 Decree*, Article I, page 6.

"That, upon the motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint herein *were dismissed without prejudice as to the following defendants*, to-wit:

Phelps Dodge Corporation; Arizona Copper Company;
[other names omitted].

Said action was had and taken in *pursuance of those certain five stipulations between the plaintiff and the defendants* above named through their solicitors of record, on file herein, wherein and wherefrom it appeared that said defendants and each of them had been named in this action and amended complaint, as parties defendant herein, through and by inadvertence, mistake and error, and that *their claims and rights, if any, were and are outside the scope of said suit* as same was and is outlined and defined in the amended complaint herein, and that they and each of them should be dismissed and eliminated from said cause, *although some of them had filed their answers setting up their claims and rights to the use of certain waters from some of the tributaries of the Gila River, and said answers were filed through mistake and a misunderstanding as to the scope of said cause as outlined* and defined in plaintiff's said amended complaint. *It was agreed in said stipulations that the dismissal of said defendants* should be accomplished upon motion of the plaintiff and Order of this Court as aforesaid, and that said Order should provide as in fact it does, as made and entered, of record herein that: *said action and dismissal should be without prejudice to said defendants* and each of them and/or to any of the other parties in this cause, or *to any claim or rights to the use of water which said defendants, or any of them,* or said other parties or

(Continued on following page)

Decree, as consented to by the parties and adopted by the court, did not quantify a single water right to any tributary of the mainstem of the Upper Gila River. The *Decree*'s schedule of rights and priorities lists only diversions from the mainstem of the Upper Gila River. Article V of the *Globe Equity No. 59 Decree* specifies "that the Gila River is the stream from which the water called for under each of said rights is and may be diverted."

Article XIII makes it clear that the *Decree* does not give rights or protections to non-parties to the *Decree*. The parties to the *Decree* agreed that they would not use the waters of the mainstem of the Gila River in a way that interfered with the prior rights (as established in the *Decree*) of other parties to the *Decree*.

> That each and all of the parties to whom rights to water are decreed in this cause (and the persons, estates, interests and ownerships represented by such thereof as are sued in a representative capacity herein), their assigns and successors in interest, servants, agents, attorneys and all persons claiming by, through or under them and their

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any of them, now or hereafter may have, *against the other or others, and that said defendants*, and each of them, *should be left as though they never had been named or made parties defendant herein*; which said action heretofore taken by the Court in the premises, is hereby confirmed, and the provisions herein recited in reference thereto are made a part of this decree to protect their rights in that respect." [Emphasis added.] *Globe Equity No. 59 Decree*, Article III, pages 8-9.

"That, upon motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint were *dismissed, without prejudice*, as to the following named defendants, to-wit:

[names omitted]

said action having been taken, because it appeared from said motion on file herein and the records; that said defendants and each of them were brought into the action by inadvertence and mistake and each was and *is not a necessary party to this action, for the reason that they have no interests or that they are outside the scope of the suit as defined* in the amended complaint herein. The action taken heretofore in these premises is hereby confirmed." [Emphasis added.] *Globe Equity No. 59 Decree*, Article III, page 10.

> successors, are hereby forever enjoined and restrained from asserting or claiming – as against any of the parties herein, their assigns or successors, or their rights as decreed herein – any right, title or interest in or to the waters of the Gila River, or any thereof, except the rights specified, determined and allowed by this decree, and each and all thereof are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters by the owners of prior or superior rights therein as defined and established by this Decree;. . . .

F. THE GEOGRAPHIC SCOPE OF THE *GLOBE EQUITY NO. 59 DECREE*

The *Globe Equity No. 59 Decree* quantifies the rights of owners of approximately 140,000 acres of land to divert water from the mainstem of the Upper Gila River. It does not quantify the right of any party to divert water from any other source for use on any other land. The Gila River System and Source encompasses approximately 57,580 square miles or 36,851,200 acres of land. The *Globe Equity No. 59 Decree* quantifies the water rights of less than four-tenths of one percent of the lands within the Gila River System and Source. Put another way, the *Globe Equity No. 59 Decree* does not quantify the water rights of over 36,500,000 acres of land in the Gila River System and Source.

II. THE *ORR DITCH DECREE*

A. PRE-*DECREE* PROCEDURES

On March 13, 1913, the United States commenced a quite title action involving the waters of the Truckee River.

On July 25, 1914, the United States amended the original complaint, adding new parties and expanding the complaint to include the Truckee River "and its tributaries."[13] "*Orr Ditch* was intended by all concerned lawyers, litigants and judges, as a general all inclusive water adjudication suit which sought to adjudicate all rights and claims in and to the waters of the Truckee River and its tributaries."[14]

The *Orr Ditch Decree* was approved by the United States District Court on September 8, 1944. Prior to entry of the *Orr Ditch Decree*, many of the parties to the litigation entered into the Truckee River Agreement (Appendix 3) in anticipation of eventual entry of the *Orr Ditch Decree*. That agreement stated:

> WHEREAS, the parties hereto (other than the Conservation District) are users and/or diverters of water flowing from Lake Tahoe and/or in the Truckee River *and its tributaries in the State of Nevada* . . .
>
> WHEREAS, it is necessary for the accomplishment of the foregoing objects that additional facilities for the storage of the waters of the Truckee River *and its tributaries* be constructed . . .
>
> WHEREAS, the United States heretofore filed a suit . . . for the purpose of obtaining an adjudication of the rights of uses in the State of Nevada to the waters of the Truckee River *and its tributaries in the State of Nevada* . . .
>
> WHEREAS, the Conservation District was organized for the purpose (among others) of capturing, storing and conserving water of the Truckee River *and its tributaries* . . .

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[13] Findings of Fact, U.S. District Court for the District of Nevada, *United States v. Truckee-Carson Irrigation District*, December 8, 1977, Fact 7

[14] *Ibid.*, Fact 8

> WHEREAS, the Power Company is the owner of certain rights in and to waters of Lake Tahoe and the Truckee River *and its tributaries* . . .
>
> WHEREAS, the parties of the fifth part, herein or their predecessors in interest are defendants in said Truckee River Adjudication Suit and are owners of rights in and to waters of the Truckee River *and its tributaries* . . .
>
> WHEREAS, the carrying out of the provisions of this agreement will assist in conserving the waters of said Lake and River *and its tributaries* . . .

[Emphasis added.] Truckee River Agreement, page 1.

B. *ORR DITCH DECREE* PROVISIONS

The *Orr Ditch Decree* (Appendix 2) was a comprehensive water rights adjudication of the entire Truckee River System and Source and involved all, or virtually all, of the users of any water to the Truckee River or any of its tributaries. It was in the nature of a general adjudication.

In its preamble, the *Orr Ditch Decree* adjudicated the right "to divert and use, from the Truckee River *and its tributaries* and from the streams, springs, drain and waste water hereinafter mentioned." [Emphasis added.] At page 12, in the Irrigation Rights Section, the *Orr Ditch Decree* confirmed that the "parties . . . have acquired rights of appropriation in, and have diverted and appropriated from the Truckee River *and its tributaries*." [Emphasis added.]

At page 87, the *Orr Ditch Decree* contains an injunctive provision prohibiting the parties and their successors "from asserting or claiming any rights in or to the waters of the Truckee River *or its tributaries* or the waters of any of the creeks or streams or other waters hereinbefore mentioned." [Emphasis added.] That provision reiterates that "said parties . . . and all persons claiming by through or under them, are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Truckee River *or its tributaries*, or with waters of any of the creeks or streams, or with any of the other waters herein mentioned." [Emphasis added.] At

page 87, the *Orr Ditch Decree* further provides that the "owner or owners of each ditch or canal herein authorized to divert water from the Truckee River *or any of its tributaries*, or from any ditch or canal or other waterway receiving water therefrom [shall] install . . . a . . . headgate." [Emphasis added.]

C. THE GEOGRAPHIC SCOPE OF THE *ORR DITCH DECREE*

The Truckee River Basin drains approximately 1,872 square miles. The *Orr Ditch Decree* adjudicated all, or virtually all, of the then existing claims to use water anywhere in the Truckee River System and Source, from the Truckee River and its tributaries.

III. *THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE*

The Arizona State Legislature authorizes general adjudications of water rights through Arizona Revised Statutes § 45-251 *et seq*. A general adjudication is "an action for the judicial determination or establishment of the extent and priority of the rights of all persons to use water in any river system and source." A.R.S. § 45-251(2). River system and source "means all water appropriable under § 45-141 and all water subject to claims based upon federal law." A.R.S. § 45-251(7).

Under the McCarran Amendment (45 U.S.C. § 666) "[c]onsent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water in a river system or other source." Consent to waiver of sovereign immunity by the United States is only given when the adjudication of the rights to the use of a river system is all-inclusive. *United States v. District Court in and for Eagle County, Colorado*, 401 U.S. 520, 91 S. Ct. 998, 28 L. Ed. 2d 278 (1971).

Prior to adoption of the general adjudication statutes, Arizona's water rights litigations were all small decrees

with limited geographic scope. The Arizona Legislature requires general adjudication courts to fold these pre-existing decrees into the overall determination of water rights for the entire river system and source. A.R.S. § 45-257(B) provides:

> The court, upon review of the report and in accordance with rule 53 of the Arizona rules of civil procedure, shall:
>
> 1. Determine the extent and priority date of and adjudicate any interest in or right to use the water of the river system and source, provided that when rights to the use of water or dates of appropriation have previously been determined in a prior decree of a court, the court shall accept the determination of such rights and dates of appropriation as found in the prior decree unless such rights have been abandoned.

When the *General Adjudication of All Rights to Use Water in the Gila River System and Source* is complete, it will have quantified the water rights of all claimants to use water throughout the Gila River watershed, including incorporating all existing decrees that previously quantified water rights for small localized reaches of the Gila River System and Source. When this process is complete, the *Gila River General Adjudication* will be a comprehensive water decree within the meaning of *Nevada v. United States*, 463 U.S. 110, 103 S. Ct. 2906, 77 L. Ed. 2d 509 (1983).

REASONS FOR DENYING THE CONDITIONAL CROSS-PETITION

I. THERE IS NO COMPELLING REASON TO GRANT *CERTIORARI*.

"Review on a writ of *certiorari* is not a matter of right, but of judicial discretion," and a petition for *certiorari* will be granted only for compelling reasons. Rule 10, Rules of the Supreme Court of the United States. Over the years, this Court has used a number of phrases to describe its criteria for accepting a petition for a writ of *certiorari*.

Whether the Court requires "special and important reasons," that the issues be "substantial in character," that the issue involve an "important federal question," or that the petition contain a "compelling reason," the rational is the same – the Court will not use its limited resources to make determinations that do not have a significant and material impact.

> A federal question raised by a petitioner may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of particular litigants. . . . "Special important reasons" imply a reach to a problem beyond the academic or episodic.
>
> * * *
>
> [I]t is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals.

Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 74, 79, 75 S. Ct. 614, 616, 619-620, 99 L. Ed. 897 (1955).

This petition for a writ of *certiorari* does not involve an issue of importance to the nation as a whole, to other state or federal courts, or to the vast majority of the citizens or water users in Arizona. The Arizona Supreme Court holding, that there is a mutality exception to *res judicata*, is consistent with *Nevada v. United States*. There is no question of law involved. The Petitioner simply believes that the Arizona Supreme Court made a factual error in its application of the legal principle. There are no compelling reasons to grant this petition.

II. THE ARIZONA SUPREME COURT CORRECTLY DETERMINED THAT THE *GLOBE EQUITY NO. 59 DECREE* DOES NOT BAR THE SAN CARLOS APACHE TRIBE FROM CLAIMING THE RIGHT TO USE WATER FROM THE TRIBUTARIES OF THE MAINSTEM OF THE UPPER GILA RIVER BECAUSE OF *RES JUDICATA*.

Claims in a current case are not subject to *res judicata* claim preclusion unless the previous litigation meets three criteria. "Res judicata applies when 'the earlier suit . . . (1) involves the same "claim" or cause of action as the later suit, (2) reaches a final judgment on the merits, and (3) involved identical parties or privies.'" [Citation omitted.] *Mpoyo v. Litton Electro-Optical Systems*, 430 F.3d 985, 987 (9th Cir. 2005).[15] "A judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to the proceedings." *Richards v. Jefferson County, Alabama,* 517 U.S. 793, 797, 116 S. Ct. 1761, 1765, 135 L. Ed. 2d 76 (1996). "In order for a judgment in a prior suit to create a *res judicata* bar of a subsequent suit, the second suit must involve the 'same parties or their privies based on the same cause of action.' *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S. Ct. 645, 649, 58 L. Ed. 2d 552 (1979)." *Alaska Sport Fishing Association v. Exxon Corporation*, 34 F.2d 769, 773 (9th Cir. 1994).[16]

Phelps Dodge Corporation was not a party, nor was it in privity with any party, to the *Globe Equity No. 59 Decree* when it was entered in 1935.[17] Phelps Dodge was

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[15] See also *Gilbert v. Board of Medical Examiners*, 155 Ariz.169, 745 P.2d 617 (App. 1987).

[16] See also *PFS v. Industrial Commission of Arizona*, 191 Ariz. 274, 278, 955 P.2d 30, 34 (App. 1997) ("A judgment establishes claim preclusion only between the parties and their privies.")

[17] Subsequent to the entry of the *Globe Equity No. 59 Decree*, Phelps Dodge Corporation acquired lands that have water rights under the *Decree*. As to these lands, which divert decreed water from the mainstem of the Gila River, Phelps Dodge Corporation is in privity and

(Continued on following page)

specifically dismissed from the *Globe Equity* litigation, without prejudice, pursuant to a stipulation with the United States. The party or privy requirement of claims preclusion is particularly strong in the case of a consent decree. The *Globe Equity No. 59 Decree* was a consent decree. See *United States v. Gila Valley Irrigation District,* 454 F.2d 219 (9th Cir. 1972) and *United States v. Gila Valley Irrigation District*, 31 F.3d 1428 (9th Cir. 1994).

In *Lorain NAACP v. Lorain Board of Education*, 979 F.2d 1141, 1148 (1992), the Sixth Circuit explained:

> The consent decree is "a strange hybrid of law." . . . It is at once "a voluntary settlement agreement which could be fully executed without judicial intervention" and "a final judicial order . . . plac[ing] the powers and prestige of the court behind the compromise struck by the parties." [Citation omitted.] Thus a consent decree is aptly described as "a settlement agreement subject to continued judicial policing. Since consent decrees and orders share many of the attributes of ordinary contracts, "they should be construed basically as contracts." [Citation omitted.]
>
> "Indeed, it is the parties' agreement that serves as the source of the court's authority to enter any judgment at all. . . . More importantly, it is the agreement of the parties, rather than the force of law upon which the complaint was originally based, that creates the obligations embodied in a consent decree." *Local Number 93, International Association of Firefighters, AFL-CIO, C.L.C. v. City of Cleveland*, 478 U.S. 501, 522, 106 S. Ct. 3063, 3075, 92 L. Ed. 2d 405 (1986).

"A consent decree binds only the consenting parties. *See, e.g., United States v. Ward Baking Co.*, 376 U.S. 327,

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receives both the benefits and responsibilities of the *Decree*. The claims brought by Phelps Dodge Corporation in this petition for a writ of certiorari deal with lands owned by Phelps Dodge Corporation that divert water only from tributaries to the Gila River.

84 S. Ct. 763, 11 L. Ed. 2d 743 (1964); *Hughes v. United States*, 342 U.S. 353, 72 S. Ct. 306, 96 L. Ed. 394 (1952)." *Keith v. Volpe*, 118 F.3d 1386, 1392 (9th Cir. 1997). A judgment by consent against a plaintiff does not operate as issue preclusion or claims preclusion against one not a party to the agreement. *Gall v. South Branch National Bank of South Dakota*, 783 F.2d 125, 127 (8th Cir. 1986). Phelps Dodge Corporation was not a participant in the *Globe Equity* consent decree. Phelps Dodge Corporation did not consent to be bound by the terms of the *Globe Equity No. 59 Decree*.

The Arizona Supreme Court correctly determined that claims preclusion requires "identity or privity between parties in the two suits." *In re The General Adjudication of All Rights to Use Water in the Gila River System and Source*, 212 Ariz. 64, 127 P.3d 882, 887 (2006). The Arizona Supreme Court also correctly determined that Phelps Dodge Corporation was not a party, or in privity with a party, to the *Globe Equity No. 59 Decree* and that Phelps Dodge Corporation was not a consenting party. The Arizona Supreme Court correctly determined that Phelps Dodge Corporation could not claim the affirmative defense of claims preclusion (*res judicata*) in the *Gila River General Adjudication*.

III. THE ARIZONA SUPREME COURT CORRECTLY DETERMINED THAT THE *NEVADA V. UNITED STATES* EXCEPTION TO THE MUTUALITY REQUIREMENT OF *RES JUDICATA* DOES NOT CAUSE THE *GLOBE EQUITY NO. 59 DECREE* TO BAR THE RIGHT OF THE SAN CARLOS APACHE TRIBE TO USE WATER FROM THE TRIBUTARIES OF THE MAINSTEM OF THE UPPER GILA RIVER.

In *Nevada v. United States*, *supra*, this Court crafted a narrow exception to the mutuality requirement of claims preclusion (*res judicata*). Phelps Dodge Corporation's allegation that the *Nevada* exception is applicable to the *Globe Equity No. 59 Decree* is incorrect. In *Nevada*, this Court referenced the general rule "that a prior judgment

will bar the 'parties' to the earlier lawsuit, 'and those in privity with them,' from relitigating the cause of action." 463 U.S. at 135, 103 S. Ct. at 2920. The Court noted "[w]hile mutuality has been for the most part abandoned in cases involving collateral estoppel, [citations omitted] it has remained a part of the doctrine of res judicata," 463 U.S. at 143, 103 S. Ct. at 2925, then stated "nevertheless, exceptions to the res judicata mutuality requirement have been found necessary, [citation omitted] and we believe that such an exception is required in this case." *Id.*

The exception to the mutuality requirement of *res judicata* arose from the comprehensive nature of the original *Orr Ditch Decree*. "[A]s the Court of Appeals determined, it 'was no garden variety quiet title action.'" *Id.* "As we have already explained, everyone involved in *Orr Ditch* contemplated a *comprehensive adjudication* of water rights intended to settle once and for all the question of how much of the Truckee River each of the litigants was entitled to." [Emphasis added.] *Id.*

The *Orr Ditch Decree* resulted from a comprehensive water rights litigation that was in the nature of a contemporary general adjudication.

> A quiet title action for the adjudication of water rights, such as the Orr Ditch suit, is distinctively equipped to serve these policies [finality of decisions involving land and water] because "it enables the court of equity to acquire jurisdiction of *all the rights involved* and also of *all the owners of those rights* and thus settle and permanently adjudicate in a single proceeding all the rights, or claims to rights, of all the claimants to the water *taken from a common source of supply*." [Emphasis added.]

463 U.S. at 129 n. 10, 103 S. Ct. at 2918 n. 10. In support of its requirement that a prior decree be comprehensive before a mutuality exception to *res judicata* can arise, this Court quoted from *Morgan v. Udy*, 58 Idaho 670, 79 P.2d 295 (1938): "[I]n the settlement of cases of this character every user of water on the stream *and all of its tributaries* in litigation are interested in the final award to each

claimant." [Emphasis added.] 463 U.S. at 139, 103 S. Ct. at 2923.

This Court concluded, "We agree with the Court of Appeals that under 'these circumstances it would be manifestly unjust . . . not to permit subsequent appropriators' to hold the Reservation to the claims it made in Orr Ditch." [Emphasis added.] 463 U.S. at 144, 103 S. Ct. at 2925. The *Orr Ditch Decree* allowed for an exception to the mutuality requirement of *res judicata* because the *Orr Ditch Decree* adjudicated the water rights to the entire Truckee River and all of its tributaries in Nevada. The *Orr Ditch Decree* was comprehensive.

In the McCarran Amendment, Congress waived the United States' sovereign immunity in certain water rights quantification cases. The precondition for waiver of sovereign immunity was that the proceedings had to be comprehensive general adjudications of all the water rights in an entire river system. Nine years before issuing its decision in *Nevada v. United States*, this Court emphasized the essential nature of comprehensiveness in general adjudications of water rights in entire river systems.

> The clear federal policy evidenced by that legislation [McCarran Amendment] is the *avoidance of piecemeal adjudication of water rights in a river system*. . . . This concern is heightened with respect to water rights, the relationships among which are highly interdependent. Indeed, we have recognized that actions seeking the allocation of water essentially involve the disposition of property and are *best conducted in unified proceedings*. . . . The consent to jurisdiction given by the McCarran Amendment bespeaks a policy that recognizes the availability of *comprehensive state systems for adjudication of water rights* as the means for achieving those goals. [Emphasis added.]

Colorado River Water Conservation District v. United States, 424 U.S. 800, 819, 96 S. Ct. 1236, 1247, 471 L. Ed. 2d 483 (1976).

The Ninth Circuit explained the McCarran requirements for waiver of sovereign immunity in water rights cases.

> There can be little doubt as to the type of suit congress had in mind. It was not a private dispute between certain water users as to their conflicting rights to the use of a stream system; rather it was the quasi-public proceeding which in the law of western waters is known as a "general adjudication" of a stream system; one in which the rights of all claimants on a stream system as between themselves are ascertained and officially stated.

State of California v. Rank, 293 F.2d 340, 347 (1961) (reversed on other grounds *sub nom. Dugan v. Rank*, 372 U.S. 609, 83 S. Ct. 999, 10 L. Ed. 2d 15).

Two years after *Nevada v. United States*, the Ninth Circuit denied a mutuality exception to *res judicata* because the water rights litigation was not comprehensive and encompassing.

> Because the 1945 consent decree was not a general adjudication of all water rights in the Yakima River Basin and did not adjudicate the treaty rights of the Yakima Nation,[FN4] appellants' res judicata argument also fails.
>
> FN4. The 1945 decree resulted from a suit filed by the United States in 1939, seeking a determination of their responsibilities to various contract holders in the Yakima Irrigation District. Neither side joined the additional parties that would have been necessary to a general adjudication, like the one involved in Nevada v. United States. [Citation omitted.] The final decree settled only the rights of the irrigation districts made party to the proceeding.

Kittias Reclamation District v. Sunnyside Valley Irrigation District, 763 F.2d 1032, 1035 (1985). See also *State of Washington Department of Ecology v. Grimes*, 121 Wash. 2d 459, 467, 852 P.2d 1044, 1048-1049 (1993) ("A general adjudication is a special form of quiet title action to

determine all existing rights to the use of water from a specific body of water.")

"The only proper method of adjudicating the rights on a stream . . . is to have all owners of lands on the watershed . . . in court at the same time." *People of the State of California v. United States*, 235 F.2d 647, 663 (9th Cir. 1956). The *Orr Ditch Decree* was a comprehensive water rights decree that determined all of the existing rights to use water from the Truckee River and all of its tributaries in Nevada (*i.e.*, the entire river system and source). The *Globe Equity No. 59 Decree*, on the other hand, was not intended to be a comprehensive water rights decree.

Prior to the adoption of the *Globe Equity No. 59 Decree*, the United States dismissed (without prejudice) any claims against any named defendants who took water only from tributaries to the mainstem of the Upper Gila River. Phelps Dodge Corporation entered into a stipulation whereby it agreed that it would be dismissed from the *Globe Equity* litigation (without prejudice) because it only took water from the tributaries to the mainstem of the Upper Gila River and, therefore, it was outside the geographic scope of the *Globe Equity* litigation.

Phelps Dodge Corporation willingly took advantage of its dismissal from the *Globe Equity* litigation, based on the fact that its water use from the tributaries was not within the geographic scope of the litigation – thereby ensuring that the ultimate decree would not be comprehensive. Now, however, Phelps Dodge Corporation argues that the *Globe Equity No. 59 Decree* should still be treated as if Phelps Dodge had actually participated. Having avoided the responsibilities of the *Globe Equity No. 59 Decree*, Phelps Dodge Corporation has no rights under the *Decree*.

The Arizona Legislature recognized the limited nature of the small localized water rights decrees issued by various courts before the adoption of the general adjudication statutes. A.R.S. § 45-257(B) requires the general adjudication court to incorporate the water rights quantified by the earlier, non-comprehensive water rights decrees into its final decree. If the *Globe*

Equity No. 59 Decree, the *Kent Decree*, or the *San Pedro Decision* were comprehensive water rights decrees, within the meaning of *Nevada v. United States*, they would be self-encompassing and it would not be necessary to include them in a broader decree.

The *Globe Equity No. 59 Decree* adjudicated the water rights of approximately 140,000 acres of the 36,851,000 acres of land in the Gila River System and Source. The *Globe Equity No. 59 Decree* quantified the water rights of less than four-tenths of one percent of the land within the Gila River watershed. The *Globe Equity No. 59 Decree* did not quantify the water rights to over 36,500,000 acres of the land within the Gila River watershed. When the *Gila River General Adjudication* is complete, it will have determined all of the existing rights to use water on any land within the Gila River System and Source. The final decree ultimately issued by the *Gila River General Adjudication* Court will be a comprehensive water rights decree that will be subject to the *Nevada v. United States* mutuality exception to *res judicata*.

The *Orr Ditch Decree* quantified the water rights of one hundred percent of the acres of land within the Truckee River System and Source (including all of its tributaries). The *Globe Equity No. 59 Decree* quantified the water rights of less than four-tenths of one percent of the acres of land within the Gila River System and Source, and did not include water rights from any of the Gila River's tributaries. A decree that quantifies the water rights of less than four-tenths of one percent of the water rights in an entire river watershed is not comprehensive, and is not subject to the mutuality exception to *res judicata*.

The Arizona Supreme Court correctly determined that the *Globe Equity No. 59 Decree* was not comprehensive because it failed to quantify water rights to any tributary of the Upper Gila River. "[B]ecause we have determined that the Decree itself precludes only additional claims to the mainstem, any assertion of preclusive effect by the Nonparties with respect to the waters of the tributaries

fails." *In re The General Adjudication of All Rights to Use Water in the Gila River System and Source*, *supra*, 127 P.3d at 902.

IV. THE ARIZONA SUPREME COURT CORRECTLY DECIDED THAT THE UNITED STATES PROPERLY SPLIT ITS WATER RIGHTS CLAIMS TO THE MAINSTEM OF THE UPPER GILA RIVER AND THE TRIBUTARIES TO THE MAINSTEM MADE ON BEHALF OF THE SAN CARLOS APACHE INDIAN RESERVATION IN THE *GLOBE EQUITY NO. 59 DECREE*.

Phelps Dodge Corporation asserts that it should be allowed to allege a claims preclusion (*res judicata*), arising from the *Globe Equity No. 59 Decree*, even though it stipulated to having its claims dismissed from the litigation without prejudice. The basis for this assertion is a claim that the United States did not "split" its claim to the use of the water of the tributaries from its claim to the use of the water of the mainstem of the Upper Gila River.

Phelps Dodge Corporation references cases that discuss the general principle that *res judicata* can attach to both claims that were brought and claims that could have been brought. See *Scoggin v. Schrunk*, 522 F.2d 436 (9th Cir. 1975); *United States v. Skokomish Indian Tribe*, 764 F.2d 670 (9th Cir. 1985); *Simmons v. New Public School District No. 8*, 251 F.3d 1210 (8th Cir. 2001); *California v. Randtron*, 284 F.3d 969 (9th Cir. 2002); and *May v. Parker-Abbott Transfer and Storage, Inc.*, 899 F.2d 1007 (10th Cir. 1990). The cases cited by Phelps Dodge Corporation actually support the Arizona Supreme Court's determination that the United States properly "split" its water rights claim to the tributaries from its water rights claim to the mainstem of the Upper Gila River.

Scoggin v. Schrunk confirms that, if a case involved two separate claims upon which the plaintiff was entitled to separate remedies, the first action did not bar recovery on the unjoined claim in the second action. 522 F.2d at 437. Arizona had dozens of small, localized water rights

decrees prior to the adoption of the general adjudication statute. None of the parties in any of those localized decrees brought action against every other water user in the Gila River System and Source. They chose to sue some water users (those in close proximity who took water from the same localized reach) and not sue other water users. There was no obligation to sue every other water user in the state. The United States' decision to bring judicial action against only part of the potential defendants was a permissible and common practice, which does not create any *res judicata* effect.

In *United States v. Skokomish Indian Tribe*, the Ninth Circuit held that *res judicata* did not prevent three Indian tribes from litigating issues between themselves when "it would not 'partially undo' the earlier decree." 764 F.2d at 671. The *Globe Equity No. 59 Decree* quantifies and allows enforcement of water rights as between specific parties who all take their *Globe Equity No. 59 Decree* water from the mainstem of the Gila River. Preventing Phelps Dodge Corporation, which was dismissed from the *Globe Equity* litigation without prejudice from claiming a *res judicata* effect from the *Decree* will not affect the rights of parties to the *Globe Equity No. 59 Decree* in any way, let alone "partially undo" the *Decree*.

Simmons v. New Public School District No. 8, recognized that a prior judgment does not have a claims preclusion (*res judicata*) effect on a subsequent litigation "when the parties to the first action 'have agreed in terms or in effect that the plaintiff may split his claim, or the defendant has acquiesced therein.'" 251 F.3d at 1214. With the entry of the *Globe Equity No. 59 Decree*, the parties agreed, pursuant to the express terms of the consent decree, that all parties who took water only from the tributaries would be dismissed without prejudice – thereby affirming the decision of the United States to "split" its claim to water from the tributaries from its claim to water from the mainstem of the Upper Gila River. Phelps Dodge Corporation "acquiesced therein" by stipulating to its dismissal from the litigation without prejudice.

Similarly, *California v. Randtron*, affirms that "a party can waive res judicata by consenting to split the claim into two suits." 284 F.3d at 975. Phelps Dodge Corporation waived any potential *res judicata* effect from the *Globe Equity* litigation when it consented to the United States' splitting of its claim to tributary water from its claim for mainstem water by stipulating to its dismissal without prejudice.

May v. Parker-Abbott Transfer and Storage, Inc., recognized that "consent decrees are of a contractual nature and, as such, their terms may alter the preclusive effects of a judgment." 899 P.2d at 1010. In that particular case, the consent decree was "absolutely silent as to the settlement's intended res judicata effect." *Id.* In *Globe Equity*, the consent decree is crystal clear in its intent that all parties with claims to use water only from the tributaries be dismissed without prejudice, and that these dismissed defendants receive neither benefits nor detriments from the *Decree's* provisions.

Phelps Dodge Corporation had, at one time, been a party defendant in the *Globe Equity* litigation. Phelps Dodge Corporation's inclusion in the litigation was a mistake, because the United States was only making claims to the right to use water from the mainstem of the Upper Gila River. The United States decided that it would not seek to quantify its rights to water from the tributaries. Phelps Dodge Corporation stipulated to the claims against it being dismissed without prejudice.

Phelps Dodge Corporation is asking this Court to determine that a dismissal without prejudice means that the plaintiff can never refile the action against the party who was dismissed. Phelps Dodge Corporation is asking this Court to prohibit parties from choosing to end a current litigation, without prejudice, with the option of reinstituting the litigation at a future date. This request runs counter to established common law.

A " 'dismissal . . . without prejudice' is a dismissal that does not 'operat[e] as an adjudication on the merits,' Rule 41(a)(1), and thus does not have a res judicata effect."

Cooter & Gell v. Hartmarx Corporation, 496 U.S. 384, 396, 110 S. Ct. 2447, 2456, 110 L. Ed. 2d 359 (1990). "Dismissal without prejudice indicates that judgment is not on the merits and will have no preclusive effect." *Jet, Inc. v. Sewage Aeration Systems*, 223 F.3d 1360, 1364 (Fed. Cir. 2000). See also *Santana v. City of Tulsa*, 359 F.3d 1241, 1246 (10th Cir. 2004); and *Mann v. Haigh*, 120 F.3d 34, 35 (4th Cir. 1997) ("the district court's earlier dismissal was made expressly without prejudice and, accordingly, has neither an issue nor a claim preclusive effect").

The inapplicability of *res judicata* to cases that are dismissed without prejudice is not a new legal doctrine. The law was the same in 1935, when Phelps Dodge Corporation stipulated to its dismissal from the litigation without prejudice. "A bill dismissed without prejudice is not a bar to a subsequent suit." *Robinson v. American Car & Foundry Co.*, 135 F. 693, 696 (7th Cir. 1905). "The cases are legion wherein a dismissal without prejudice has been construed as a reservation of a right to reinstate the proceeding." *Id.*

The United States utilized the most comprehensive, most effective, most open and notorious means of "splitting" its claim to the water of the tributaries and its claim to the water of the mainstem of the Gila River. The United States dismissed all of its claims against all of the parties who diverted water only from the tributaries. Phelps Dodge Corporation stipulated to the dismissal of all claims against its use of the water of the tributaries, without prejudice. Phelps Dodge Corporation was well aware that dismissal of the claims against it, without prejudice, meant that the claims could, and almost certainly would, be brought at some time in the future. That time is now.

The Arizona Supreme Court properly determined that "parties to a consent decree can agree to limit the decree's preclusive effects." *In re The General Adjudication of All Rights to Use Water in the Gila River System and Source*, *supra*, 127 P.3d at 888. The Arizona Supreme Court was correct in its determination that a "dismissal without prejudice is a dismissal that does not operate as an adjudication

upon the merits and thus does not have a res judicata effect." 127 P.3d at 892. The Arizona Supreme Court correctly determined that Phelps Dodge Corporation has no right to assert a claims preclusion (*res judicata*) effect, arising from the *Globe Equity No. 59 Decree*, in the *Gila River General Adjudication*.

CONCLUSION

With regard to its lands that take water from the tributaries, Phelps Dodge Corporation is not now, and never has been, a party to the *Globe Equity No. 59 Decree*. With regard to the lands and water rights claims that are the subject of this petition for writ of *certiorari*, Phelps Dodge Corporation is not in privity with any party to the *Globe Equity No. 59 Decree*. Phelps Dodge Corporation's failure to be a party, or in privity with a party, to the *Globe Equity No. 59 Decree* is fatal to its claim of claim preclusion (*res judicata*) in the *Gila River General Adjudication*.

Unlike the *Orr Ditch Decree*, the *Globe Equity No. 59 Decree* is not a comprehensive water rights adjudication of all the rights of all the parties to the use of all the water of the entire river system and source. Phelps Dodge Corporation knew that the *Globe Equity No. 59 Decree* was not comprehensive, and that it was not intended to be comprehensive when it was entered in 1935. Phelps Dodge Corporation actively worked to ensure that the *Globe Equity No. 59 Decree* would not be comprehensive by stipulating to the dismissal of the action against its claims to the waters of the tributaries.

A decree that quantifies less than four-tenths of one percent of the land within a watershed is not comprehensive, as is required before the *Nevada v. United States* exception to the mutuality requirement of *res judicata* can be imposed.

The United States properly "split" its claim to the waters of the tributaries and its claim to the waters of the mainstem of the Upper Gila River by dismissing from the litigation, without prejudice, all party defendants who took water only from the tributaries. Dismissal without prejudice

has no claims preclusion (*res judicata*) effect. Following a dismissal without prejudice, the plaintiff has the right to refile the action. Phelps Dodge Corporation consented to the United States' decision to split the claims when Phelps Dodge stipulated to being dismissed from the litigation without prejudice.

Respectfully submitted,

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APPENDIX 1

Globe Equity No. 59

In the District Court of the United States In and for the District of Arizona

THE UNITED STATES OF AMERICA

vs.

GILA VALLEY IRRIGATION DISTRICT, ET AL.

DECREE ENTERED JUNE 29, 1935

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This cause came on to be heard at this term, and thereupon it was shown to the court:

That the plaintiff and the parties defendant whose claims and rights have been presented by answer or stipulation and remain for determination herein, have concluded and settled all issues in this cause as between plaintiff and said parties defendant, and as between said defendants and each of them and every other thereof, and mutually have agreed – all as evidenced, for plaintiff, by the assenting signatures, endorsed at the end hereof, of its solicitors of record and the Attorney General and Secretary of the Interior of the United States, and for said defendants, by the assenting signatures, likewise endorsed at the end hereof personally, or of their several solicitors of record – that such settlement should be embodied in and confirmed and made effective by way of the within decree of the Court in this cause defining and adjudicating their claims and rights as against each other in identical form and substance as hereinafter set forth; and the Court upon consideration thereof and of the record herein as to the disposal of the parties defendant who have been separated from the cause, and being duly informed in said premises,

doth find, order, adjudge, and declare its decree herein to be as follows, namely:

I

That by the orders of this Court dated January 22, 1929, and March 11, 1930, this suit and the amended complaint herein, upon the motion of plaintiff, were dismissed as to defendants:

John S. Abbott; Charles A. Adams; A. Allen; Francisco Alvidrus; Paul Beeker; George P. Bennett; Mary E. Benscoe; Bentz Brothers; J. W. Bentz; George A. Bigler; C. O. Billingsley; Est. of Paul Blackmore; B. A. Boyles; Sam Brown; Newton Bradley; Juan Cachon; Ella Carpenter; J. C. Carpenter; Rachel Carr; John Castro; Chono Celayo; Tim Chapman; Ben M. Crawford; W. J. Davis; G. H. Dinsmore; John Eastman; Dud Eldridge; J. F. English; Helen T. French; Mattie M. Hall; Hawkins & Simms Milling & Irrigating Company; A. W. Heath; Mrs. Clara Hicks; James Henshall; Jacob Hildebaugh; J. I. Hinkle; J. P. Hinkle; A. M. Hooper; Roger Hoopes; J. G. Hopkins; R. T. Horrell; Arthur Houser; S. L. Johns; Bennet J. Kellner; Ernest F. Kellner; H. D. Kepper; J. H. Kerby; J. H. Lacey; John Laffey; Louise LeBaron; James LeHoxi; W. A. Leonard; Mrs. Frank Lewis; J. W. Lightfoot; George Lobb; Gordon McLean; B. Mately; Rafael Memos; Manrico Mijia; Sidney B. Moeur; E. C. Montgomery; Charles Morrell; Reputhio Moriz; George Olmstead; Lillian W. Pearl; James A. Perkins; Marie C. Peters; S. K. Phillips; Frederick M. Putnam; John Ralston; Gabriel Robles; H. N. Russel; Victoriana Ruiz; J. Ryan; H. Salazar; Manuel Serano; S. Schultz; Charles H. Vann;

Walter Shayeb; Estate of Charles R. Sligh; Nolberto Subia; Edward H. Sinclair; George Thompson; Jose Tonis; J. G. Turney; Manual Urtiaga; Elijah Urtiaga; Judd Webster; George W. Wells; and O. H. Brown;

W. L. Cauthen; W. R. Elliott; William Jackson; J. F. Kepper; D. T. McGuire; and H. B. Sweeting;

it having been found and determined by the Court in that relation that they and each of them were not proper or necessary parties defendant in this cause; which said action of the Court in these premises hereby confirmed.

II

That by way of amended complaint, as filed herein on the 5th day of December, A.D., 1927, and orders of this Court bringing in new parties defendant under said amended complaint,

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this suit and the amended complaint herein were directed against each and all of the defendants named below, to-wit:

D. Bertoglio; Beatrice Perry; and H. B. Wiggins;

Also, James R. Pruett; Antonio Specia and H. B. Summers;

Also, American Smelting and Refining Company; A. A. Anderson; John N. Anderson; Mary A. Antenoll; Estate of Walter Baitty, Homer H. Martin, Administrator; J. W. Baker; Henry Bamesberger; Ruth R. Barham; Estate of Thomas

Barrett, Dan T. Peart, Administrator; Pansy Kenower Bartlett; Madelene Bassler; Albert C. Becken; Grace R. Becken; Charles F. Bennett; Jarvus D. Bennett; Francis D. Blair, Clifton Bogard; C. D. Bradley; Ida M. Bradley; John R. Bradshaw; Esther A. Brockway; Ira S. Brayton; Marshall F. Brockway; Charlotte Hall Brown; Elizabeth Brown; J. P. Brown; Sarah B. Brown; Thresa Hall Brown; Estate of W. F. Brown, P. D. Overfield, Administrator; John J. Buggs; John W. Burris; Lee Robinson Burris; L. B. Cadwell; Casa Grande Valley Bank; Mike Celaya; Estate of W. B. Charlton, John E. Charlton, Administrator; Albert J. Christensen; Edith M. Clemans; Hazel H. Clemans; Winnefred W. Clemans; W. J. Clemans, Jr.; W. P. Clements; Mrs. Charles E. Cleveland; Inez H. Conrad; Thomas A. Crow; Jennie Davidson; Maurice Dodd; Tracy Eastman; Christobell G. Ellis; Joe Erny; Jesus Espinosa; Jose T. Espinosa; Salvador S. Feliz; C. A. Fitzgerald; James D. Freeman; Fidelity Savings & Loan Association; First National Bank of Florence; May E. Furback; Kathrina Gack; Estate of George F. Gallagher, Robert Denton, Administrator; L. D. Gamble; M. L. Gilbert; George F. Graham; Nellie R. Gochenouer; Joseph Greene; Virginia Hales; John Hamilton; A. T. Hammons, Receiver; May Catlin Hansen; J. B. Harsha; Vernon W. Havins; John Hendricks; W. E. Herron; Edith B. Jamieson; James C. Jayne; E. R. Johnson; Richard J. Jones; Julia R. Julian; Fred R. Kenover; Ola R. Kenover; H. B. Klingenberg; Anna E. Kochsmeier; Frederick Kochsmeier; Henry Kochsmeier, Sr.; Henry D. Kochsmeier; Maria Kochsmeier; Gustav K. Kratzka; James J. Kruse; J. E. LaFleur; W. W. Lane; Dirk Lay; Elizabeth L. Lay; Estate of Lola W. Lee, Dan T. Peart, Administrator; David A. Little; Minnie Lobb; Estate of

W. H. Lonergan, T. A. Lonergan, Administrator; May H. McBennett; A. L. McCann; Alpha E. McCann; Minnie M. McCann; James K. McCarty; Carrie McDowell; M. W. McDowell; Gertrude B. McGee; Glen C. McKenzie; Elizabeth P. McMurray; Melanie Mendell; Rita Marquez; Ivey Marshall; Ralph K. Marshall; Joe Marta; David Omer Martin; Ben B. Mathews; Josiah J. Maxey; R. D. Melick; Lillian C. Merchant; John B. Michea; J. L. Mills; Mary L. Miles; R. M. Miller; Lillian I. Mitchell; Henry G. Moeller; Fayette Moore; Ethel M. Moorehouse; H. W. Moorehouse; Vashti B. Moorehouse; Margarete L. Murphy; J. S. Murry; C. H. Niemeyer; Lillian O'Connor; Olive J. O'Connor; Lewis Olesen; Antonio S. Padilla; Florence Palamounter; Howard G. Palamounter; Lee Patrick; Roy F. Patrick; George W. Pattee; Harriet E. Pattee; Estate of Earl P. Patterson, Thomas D. Derry, Administrator; Willie K. Pearson; Emma Pennington; Walter J. Pennington; Amandus C. Peters; Addie Phillips; Margaret E. Pierce; Pinal Investment Company; Frank Pinkley; Eli E. Piper; W. M. Pollock; Grace P. Pottebaum; Robert H. Pottebaum; Estate of W. Y. Price; Mrs. W. Y. Price; Alice M. Prouty; Lloyd W. Prouty; W. Scott Prouty; Edwin Ralph; Henderson H. Raybourn; A. V. Read; Martin J. Reed; Fern M. Richardson; H. G. Richardson; S. H. Rorabaugh; Ralph M. Rounds; Andris V. Salazar; Christiana Salazar; John Saxman; B. W. Scholtz; Estate of Elizabeth Schultz, Fred T. Armstead, Administrator; William J. Schultze; Charles M. Schwab; Emma B. Schwarm; Clara C. Seagoe; George P. Sellers; Mary S. Scheafe; Elizabeth Shannon; Mary L. Shannon; Chloren B. Shiflet; John Sigfrid; Carrie S. Sigler; George W. Sigler; J. O. Simmons; Southern Arizona Bank & Trust Company; Herbert G. Sparks; C. C. Springer;

Mary E. Stevens; T. V. Stokes; Walter W. Stovall; Tim Sullivan; Surety Abstract & Realty Company; J. C. Swan; Estate of John W. Sweeney, Sam Sweeney, Administrator; Chas. F. Tantlinger; S. E. Tellyer; Frank A. Thackery; Augusta Thor; Fred Thor; Mae Tiffiny; Mrs. Billie

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Treat; S. Louise Trekell; Mary E. Truman; E. S. Turville; Mrs. A. C. Urban; F. A. Urban; Valley Bank of Phoenix; Calbert L. Vance; Viola C. Vance; Ed G. Van Haren; Gregorio Vasquez; Augustine Villar; Joe Villar; George P. Walker; Harry Ward; Roy S. Ward; C. E. Waterbury; Josie Waterbury; Katie E. Weaver; Adolphus Weyrick; Natalia M. White; Dorcas E. Whitlow; Josephine R. Wills; Sophia Wind; Jessie P. Woody; Soren Yensen; and Elsie DeWolf Zellweger;

That original process thereunder by way of Subpoena Ad Respondendum, or by Court Order under section 57 of the Judicial Code, was duly issued and served, with a copy of the amended complaint, upon each of the aforenamed defendants, and each of said defendants failed and neglected to make or file an answer or otherwise defend or make a plea to said amended complaint as required by Rule 16 of the Rules of Practice for Courts of Equity of the United States; that orders taking the amended complaint as confessed by them and each of them were duly made herein and entered in the Order Book on the 25th day of November, 1929, the 11th day of March, 1930 and on the 19th day of December, 1934, in the office of the Clerk of this Court: each such order being so made and entered after the failure of each of the particular defendants named therein to make answer, defense or other plea as aforesaid; that no proceeding has been taken or initiated

by them or any of them since the entry of said orders, and each thereof; and said defendants and each and every of them are now and remain in default of any answer, defense or other plea herein, and more than 30 days have elapsed since the entry of said orders and each thereof.

That under the orders Pro Confesso aforesaid, the amended complaint is taken as confessed, and it is ordered, adjudged and decreed herein, that the defendants above named in this article and each thereof, as against any of the parties plaintiff or defendant in this cause, their assigns or successors in interest, or their rights as herein decreed; that said defendants and each of them have no right to the use of water from the Gila River as against the parties to this action other than those set up in this decree, and they and each of them and, their heirs, executors, administrators and assigns or successors in interest are debarred and estopped from asserting or claiming any different or other, right, title or interest in or to the water or the use of any water from the Gila River as against the rights of the plaintiff and those of the defendants determined and set up in this decree.

III

That, upon the motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint herein were dismissed without prejudice as to the following defendants, to-wit:

S. B. Blake; Cluff & Mitchell; Colvin-Jones Consolidated Ditch Co.; John H. Davidson; W. P. Ferris; Jose Gonzales; T. Hinton; Layton & Ison; James Layton; E. D. McEuen; Roy A. Martin; Ed Moody; J. C. Norton; George A. Olney; Asa

Packard; N. E. Platt; W. E. Posy; S. A. Powell; Pursley & Nash; Mrs. Mary Reynolds; Bert E. Rose; Smithville Extension Canal Company; Cinaoo Telles; E. L. Tidwell; Louis Voelokel; W. J. Walton; T. W. Wamslee; Estate of Webster, F. A. Webster, Administrator; Estate of J. R. Williams; B. D. Wilson; Young & Ridgway;

Also, Bank of Duncan; D. E. Barlow; J. W. Becker; Billingsley Canal Company; R. T. Bishop; Harry H. Boyer; Burcher Ditch Company; Estate of W. C. Cheatham; Edward C. Cole; Consolidated Canal Company; J. H. T. Cosper; Cosper-Wilson Canal Company; Ethel M. Cunningham; E. C. DeMoss; Double Circle Cattle Company; Thomas Edwards; Bonnie Elrage; Mangus Elrage; Mrs. Geo. J. Filleman; J. J. Filleman; Franklin Canal Company; Fred J. Fritz; Mrs. Katie Fritz; Furr & Blain; Harve K. Gatlin; Gila Ranch Company; Greenhorn Ditch Company; Greenhorn Irrigating Canal; County of Greenlee; O. C. Greenwell; Ole Hagan; William F. Hagan; S. P. Hale; Francelle Heywood; Mrs. Clara Hicks; County of Hidalgo; Hill Ditch; Francis M. Hodges; Lettie

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F. Hunt; M. J. Jensen; M. L. Jensen; D. L. Johnson; F. E. Johnson; R. S. Johnson; A. L. Jones; J. H. Jones, Sr., Estate; Martin & Pearson Ditch; Martin & Pearson Irrigating Canal Company; Arven Mortensen; T. J. Nations; G. O. Payne; C. V. Peery; T. M. Peters; Dell M. Potter; Fred Powell; R. Richardson; Romney Brothers; Romney & Lunt; Rucker Ditch; School District No. 30; J. M. Smelley; A. F. Smith; The Estate of Spoon, Ira L. Spoon, Adm.; A. G. Stevenson; W. R. Stevenson;

Sunset Irrigating Canal Company; D. H. Thompson; W. Plune Tibbets; H. P. Trainor; Virden Ward; Ward & Courtney Dam Company; T. M. Williamson; State of New Mexico;

Also, Phelps Dodge Corporation; Arizona Copper Company;

Also, Morenci Water Company;

Also, Aztec Mutual Canal Company; James Leroy McCarthy; Richard E. Geyler; Frank C. Elwell.

Said action was had and taken in pursuance of those certain five stipulations between the plaintiff and the defendants above named through their solicitors of record, on file herein, wherein and wherefrom it appeared that said defendants and each of them had been named in this action and amended complaint, as parties defendant herein, through and by inadvertance, mistake and error, and that their claims and rights, if any, were and are outside the scope of said suit as same was and is outlined and defined in the amended complaint herein, and that they and each of them should be dismissed and eliminated from said cause, although some of them had filed their answers setting up their claims and rights to the use of certain waters from some of the tributaries of the Gila River, and said answers were filed through mistake and a misunderstanding as to the scope of said cause as outlined and defined in plaintiffs said amended complaint. It was agreed in said stipulations that the dismissal of said defendants should be accomplished upon motion of the plaintiff and Order of this Court as aforesaid, and that said Order should provide as in fact it does, as made and entered, of record herein that: said action and dismissal should be without prejudice to said defendants and each of

them and/or to any of the other parties in this cause, or to any claim or rights to the use of water which said defendants, or any of them, or said other parties or any of them, now or hereafter may have, against the other or others, and that said defendants, and each of them, should be left as though they never had been named or made parties defendant herein; which said action heretofore taken by the Court in the premises, is hereby confirmed, and the provisions herein recited in reference thereto are made a part of this decree to protect their rights in that respect.

That, upon motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended complaint were dismissed as to the following named defendants, to-wit:

> A. P. Angle; Arizona Hercules Copper Company; Josephine Burks; Simon Cisneros; Louis Gilson; Gold Bullion Mining Company; Charles J. Gross; John M. Hatfield; G. H. Head; London Gila Mining Company; Theodore Lujan; Katherine S. Mellon; Luis Santos; and Manuel Tibbets;
>
> Also, Frisco Placer Mining Company; Anna M. Gale; A. A. Larona; Brotten Lunt; Jose Sanchez; William Whelin; Harry C. White; and the White Mountain Lumber Company.

Said action having been taken for the reason that; from said motion on file herein it appeared that said defendants and each of them has no interest in the issues of this action and that none of them were or are necessary parties defendant; the action heretofore taken in these premises is hereby confirmed.

That, upon motion of the plaintiff, by Order of this Court dated March 30, 1935, this suit and the amended

complaint were dismissed, without prejudice, as to the following named

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defendants, to-wit:

> Castilo Ditch; Thomas Crabtree; Ed Elrage; Dale M. Garden; Jensen Brothers; J. B. Johns; F. Vernon Jones; William L. Keppler; Randall Lunt; Vernon Lunt; M. J. McClaren; Hugh McKeen; William Milligan; Alfred Mortenson; Nichols & Company; Tomas Ponce; Serano R. Sexton; Ernest D. Shade; C. M. Short; Frank Shiver; A. R. Snyder; S. Stewart; T. L. Stockton; J. A. Suydam; Luther T. Sweeting; Miss E. A. Swofford; O. F. Swofford; Bonnie Ulrage; J. F. Wardner; and W. F. Willis;

said action having been taken, because it appeared from said motion on file herein and the records; that said defendants and each of them were brought into the action by inadvertance and mistake and each was and is not a necessary party to this action, for the reason that they have no interests or that they are outside the scope of the suit as defined in the amended complaint herein. The action taken heretofore in these premises is hereby confirmed.

That at the same time and in the same order this suit and amended complaint were dismissed as to the following defendants, to-wit:

> W. B. Barham; J. M. Biddle; Mary W. Bradshaw; Jackson Branaman; Martha W. Brockway; Fred D. Carpenter; E. D. Chandler; Dessa Harbison; Jim Harper; Jacob Helfenstein; A. S. Henry; Mrs. Alice Huntsman; John A. Johnson; A. E.

Keoler; T. A. Lonergan; Clara B. McFarland; Gordon McMurray; William C. McNatt; R. B. Maley; Martha M. Merrill; Estate of Lizzie B. Murphy; W. F. Murphy, Sr., Administrator; John Nash; Ansel Phelps; Georgiana Phelps; George W. Sheerer; Chas. D. Stahlberg; Glodine Stahlberg; Phoebe E. Templeton; Estate of Jose Vasquez, Charles F. Bennett, Administrator; Albert Warren; Alice E. Nixon; Virginia Griffin; Horace J. Johnson; Mary Johnson; Lula O. Lockerd; and John C. Swan;

said action having been taken and had, for the reasons shown in said motion, to wit: that each of said defendants had been brought in as parties defendant through inadvertance and mistake or that they had transferred their interests to others who are parties defendant herein, and they are necessary parties defendant herein. The action heretofore taken in these premises is hereby confirmed.

That upon motion of the plaintiff, by Order of this Court, dated March 30, 1935, this suit and the amended complaint herein were dismissed, as to the following defendants, to-wit:

Henry W. Blough; John F. Brown; Fred E. Gack; John MacGregor Goodale; Frank E. Hamilton; Frederick K. Kratzka; J. T. Lewis; James F. McManis; George W. Morrell; John O'Brien; Margaret T. Randall; Jennie Roberts; Earl F. Smiley; Ole H. Smith; A. W. Sydnor; M. E. Templeton; Bert Vidans; Fannie Wallrich; W. G. Williams; S. H. Wynn;

said action having been taken and had, for the reasons shown in said motion on file herein – as well as from the records herein, that; said and every of the last named parties are not necessary parties defendant herein; that

their lands are embraced within and constitute a part of the San Carlos Irrigation and Drainage District; that each of them has entered into a contract with the United States, in relation to his land and water rights therefor and that because of said contractual relationship his lands have been and are designated as a part of the United States San Carlos Indian Irrigation Project; that their and each of their interests have been and are represented in this cause by said District and the plaintiff and that their and each of their water rights have been and are set up and provided for in this decree. The action taken heretofore by the Court in these premises is hereby confirmed.

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That, upon motion of the plaintiff, by Order of this Court on the 30th day of March, 1935, this suit and the amended complaint were dismissed as to the defendants: Estate of Della Tharp, Edward Tharp, Administrator; Estate of James Tharp, Edward Tharp, Administrator; said action was taken and had pursuant to said motion on file herein and for the reasons therein given that; the lands and water rights thereunto belonging were by said parties covered into the Florence-Casa Grande Project by contract with the United States, the plaintiff herein; that their and each of their interests have been presented to the Court by the Florence-Casa Grande Water Users Association and their and each of their interests have been and are represented herein by the United States; that they are not necessary parties defendant in this action; that their and each of their interests are and have been set up and provided for in this decree and given their proper place in the Priority Schedule, a part of this decree, which said action is hereby confirmed.

That, upon motion duly made, by Order of this Court dated April 3, 1935, the Kennecott Copper Corporation, a corporation, was made a party defendant herein, by substitution, as the successor in interest of the Nevada Consolidated Copper Company and the Ray Consolidated Copper Company. The action heretofore taken in these premises is hereby confirmed.

IV

That the following named defendants own land as follows: Estate of Dora M. Clark, the NW1/4, Section 22, Township 6 South, Range 7 East, Gila and Salt River Base and Meridian; Margaret P. Brown, the SW1/4, Section 15, Township 6 South, Range 7 East, Gila and Salt River Base and Meridian; and H. H. McNeil, the N1/2? SE1/4, Section 9, Township 5 South, Range 9 East, Gila and Salt River Base and Meridian; and Otis J. Baughn, 80 acres of land in the N1/2? SW1/4 of Section 8, Township 6 South, Range 8 East, Gila and Salt River Base and Meridian; and that they and each of them in the past and prior to this decree, have made diligent and extensive efforts and have expended sums of money in an effort to secure water from the Gila River for the irrigation of their and each of their lands, but notwithstanding said efforts and expenditures, they and each of them were and have been unable to make use of said water upon their said lands and have not acquired any right to the use of said water from the Gila River upon their said lands, and that they and neither of them has a right to use water from the said river for the irrigation of their said lands as against the parties to this cause.

V

That each of the parties named in the Schedule of Rights and Priorities set out below and made part hereof (hereinafter for convenience often referred to as the Schedule or Priority Schedule), in proper person or in the representative capacity indicated, has acquired and owns the right or rights accredited to him in said Schedule; that the Gila River is the stream from which the water called for under each of said rights is and may be diverted; that the point of such diversion, the name or description of the dam, canal, or other appliance through which said diversion is accomplished and said waters are carried to the lands through the irrigation of which said right has been acquired, together with – as to individual defendants, and plaintiff where the appropriation rights of others have been conveyed to it as hereinafter further described – the description of said lands and the number of irrigable acres thereof in each quarter or quarter-quarter section, or lot or lots as the case may be, to which said right applies, are as stated in said schedule opposite the name of each of said parties in appropriately designated columns thereof; that the priority date of each of said rights is as stated for each owner in the column so designated, and such owner is entitled thereunder and as of the date of said priority to divert from the natural flow of the stream, at the point of diversion so designated and to carry and convey to, and apply to beneficial use upon, said lands for the irrigation thereof, during each irrigation season, a total amount of water not exceeding 6 acre feet per each acre of said lands, which said amount shall not be diverted from the stream at any time during said season at a greater rate

than one-eightieth (1/80) of a cubic foot per second for each acre of said lands, except as hereinafter provided; that the right of direct diversion from the natural flow of the stream for each of said parties, therefore, may be readily calculated, for the area then being irrigated, as follows:

No. of acres times 6 = Total allowable diversion in acre-feet during each irrigation season;

No. of acres times 1/80 = Rate of diversion in cubic feet per second which shall not be exceeded in making said draft;

provided, however, that the water commissioner hereinafter provided for, in order to take proper advantage of sudden freshets or other periods of more plentiful natural flow in the stream, may authorize and provide for, and as to the lands of defendants above the San Carlos Reservoir shall permit, when no injury will result to others not being so accommodated, diversions therefrom under said rights at a greater rate than 1/80 of a cubic foot per second, but subject to the explicit condition that the total diversion for the lands involved shall not exceed during the irrigation season the said total of 6 acre feet per acre; that the right of each of said parties, based upon the total area involved in each instance, is stated in acre feet per irrigation season, and in cubic feet per second (maximum rate of diversion as aforesaid), opposite the names of said party, respectively in the last two columns of said schedule; that this right for each of said parties entitles him to a first and prior call to the extent thereof upon the available natural flow of the stream as against other whose rights as listed in said Schedule bear later dates of priority than his own, while others, when their rights have earlier dates of priority than his, have a first and prior call to the extent thereof upon said stream flow as against him; that each of

said rights is gauged by and limited to the amount of water which has been and can be beneficially diverted and applied to the irrigation of said lands; that this quantity is determined and adjudged herein to be the amount in acre-feet per acre for the irrigation season stated above, which shall include and be charged with all conveyance loss from the point of diversion from the stream to the lands; that said lands require that there be applied thereto, and therefore diverted from the stream, somewhat larger amounts of water in the hotter summer months of the irrigation season than at any other times therein, of which account is taken by providing herein for a considerably larger diversion right than would be required at constant even flow to produce 6 acre-feet per acre during each irrigation season; that where the figures and data given for a single water right priority are set opposite the names of more than one defendant in said Schedule, each of the same is deemed and held to have an undivided interest in the whole there described under such mutual contractual relations as may obtain between them, which are not defined or determined in this decree; that certain of the rights accredited to plaintiff in said Schedule may be classified as rights by purchase in that they were acquired by the United States by way of conveyances from the owners of the private lands through the irrigation of which they were acquired, said conveyances being made by way of the "Agreement of Landowners to induce the Secretary of the Interior to undertake the Florence-Casa Grande Irrigation Project, and for the building and operation thereof in case the same is declared feasible" and the "Landowners Agreement with the Secretary of the Interior, San Carlos Project, Act of June 7, 1924," entered into by the United States and such owners, which were executed and put into effect under and in connection with the

Florence-Casa Grande and San Carlos Projects; that these rights, having priorities in great number, ranging from the year 1868 to 1914 inclusive, are set down in their

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order in said Schedule and totaled for each year under the name of the United States, with the description in each instance of the lands through the irrigation of which they were acquired by appropriation and beneficial use; also, in an appropriate column in each instance the names of the landowners making the conveyances, or their successors in interest, made formal parties defendant herein, are set down; all to the end that said rights may be identified and preserved; that plaintiff, in accord with said agreements and conveyances, is hereby authorized and empowered to divert from the Gila River the waters called for under said rights for use by irrigation upon the lands of the Florence-Casa Grande and San Carlos Projects as hereinafter further described; that the other rights of plaintiff, which may be generally described as those owned by the United States for and on account of the Indians of the Gila River and San Carlos Indian Reservations and as reservations and appropriations made by the United States for and on account of the Florence-Casa Grande and San Carlos Projects, are set down and outlined in their proper order in said Schedule as a matter of convenience, but each of said rights furthermore is specifically defined and decreed in later Articles hereof; including the right of the United States, as of the year 1924, to store the waters of the Gila River in the San Carlos Reservoir, which is specifically defined in Article VI and is of different character than the rights directly to divert from the natural flow of the stream, with which this Article of the Decree and the Priority Schedule made part hereof primarily has to do;

that certain of the rights of plaintiff, as same are set down and referred to in said Schedule, do not accumulate, as is specifically stated and described in the last paragraph of Article VI of this decree; that also certain of the rights of the Nevada Consolidated Copper Company, as same are set down in said Schedule, do not accumulate, as is specifically stated in the first paragraph of Article IX hereof; that as to all other rights to divert the waters of the Gila River which are set down and defined in said Schedule, including the so-called rights by purchase of the United States (which for convenience here comes within the designation "concern"), when rights of different priorities are ascribed to the same person or concern, said rights as thus accredited to that person or concern do accumulate, so that the total amount of water in acre feet per season which can be taken from the stream, under the priority of any certain date and the priorities of previous dates (ascribed to that person or concern in said Schedule), with the maximum rate of diversion in cubic feet per second governing same, may and shall be ascertained by adding together the number of acre feet per season set down under each of said priorities; that maximum rate at which same can be diverted being also the sum of the maximum rates, in cubic feet per second, given under each of said dates of priority; that rights to divert the waters of the Gila River are decreed to the various canal companies and are set down under their names in the Priority Schedule as of various dates of priority; that the description in each instance of the lands through the irrigation of which said rights were acquired by appropriation and beneficial use and the names of the landowners or their successors in interest, made formal parties defendant herein (and set down under the heading "PARTIES OWNING SAID LANDS WHEN JURISDICTION ACQUIRED HEREIN"),

whose beneficial application of water to said lands supported said appropriations are also listed under the names of each of said canal companies, the amounts of water in acre feet per season, with the maximum rates of diversion, allowed for the irrigation of the various subdivisions of said lands being given in the so-called individual columns under the general heading "Diversion Right" in said Priority Schedule; all to the end that the diversion rights of said canal companies may be adequately defined, and the individual rights of said defendant landowners to maintain, arrange or contract for, under applicable statutes and provisions of law, the diversion and carriage of water from the stream to said lands under and in accord with said rights may be identified and preserved; that the irrigation season referred to in this Article of the Decree, which shall as well apply to all rights adjudicated herein, is hereby defined as and determined to be the period beginning on January 1st of each year and ending on December 31st of the same year; that the Schedule above referred to and made part hereof is as follows:

[tables of priority rights and holders]

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VI

That plaintiff has and owns rights in the waters of the Gila River, and in and to the use of said waters, as follows:

(1) The right on behalf of the Pima and other Indians of the Gila River Indian Reservation, their descendants, successors and assigns, to divert 210,000 acre feet of the waters of the Gila River during each irrigation season, from the natural flow in said river at the Ashurst-Hayden

and Sacaton diversion dams – as of an immemorial date of priority and to the extent that such waters are available under said priority – at a rate of diversion not exceeding 437.5 cubic feet per second at any time during such season for the reclamation and irrigation of the irrigable Indian allotments on said reservation, which amount to 49,896 acres, as they now are or hereafter may be made, and of the administrative area on said Reservation which amounts to 650 acres, to the extent that the herein described water right, which is sufficient for and limited to the needs of 35,000 acres, will reclaim and irrigate the same. The waters available under this right and priority shall be divided and distributed to the lands of the Florence-Casa Grande Project as decreed and provided in subdivision (3) of this Article.

(2) The right, on behalf of the Apache and other Indians of the San Carlos Indian Reservation, their descendants, successors and assigns, to divert 6,000 acre feet of the waters of the Gila River, during each irrigation season, from the natural flow in said river at diversion points on said river within said reservation – or above the eastern boundary thereof under such rights of way as may now exist or be acquired therefor; due measures being taken to avoid injuries to other water users by said last mentioned diversions, – as of a date of priority of the year 1846 and to the extent that such waters are available under said priority – at a rate of diversion not exceeding 12.5 cubic feet per second at any time during such season, for the reclamation and irrigation of 1000 acres of the irrigable lands within the said reservation (or in part or wholly within the valley of the Gila River above the eastern boundary of said Reservation, if lands are there acquired by the United States for that purpose), situated

in the County of Graham, State of Arizona, and more particularly described as within said reservation and that portion of the valley of the Gila River above the San Carlos Reservoir and flow line thereof; that said water right, however, if or when sanctioned by law, at the discretion of the Secretary of the Interior and with the consent of the San Carlos Irrigation and Drainage District expressed by its board of directors, may be purchased by or for the benefit of the San Carlos Project and used for said project as other of that project's stream flow right below the San Carlos Reservoir are or may be used under this decree, provided, however, that such right is and shall be treated as a project right to which no individual or individual lands shall have or assert an interest or priority as against any lands given rights in the Priority Schedule; and defendants, Gila Valley Irrigation District, Virden Irrigation District and Franklin Irrigation District through their boards of directors, having offered and agreed to facilitate the aforesaid purchase of said water right so that it may be transferred and used as aforesaid for the benefit of the San Carlos Project as other of that Project's stream flow rights are or may be used below said reservoir under this decree and to pay the United States therefor the sum of Sixty-Two Thousand Five Hundred ($62,500.00) Dollars, said payments to be made by each of said Districts, in the proportion that the number of acres of land in said district decreed water rights herein bears to the whole number of acres of land in said three districts' so decreed water rights, and to pay said sum within two years from the acceptance of said offer, if said offer shall be accepted within five years from the date of this decree. Said offer, however, to be considered as made by said districts only when all requirements of Arizona law with regard to making binding offers of such a character shall have been

complied with, it is hereby decreed that if said offer is made and accepted at said purchase price sum or at any other sum agreed upon by the said three districts and the United States, the said water right shall be transferred as aforesaid for the benefit of the San Carlos Project, but, in no event shall be used or usable or be asserted as against the lands given rights in the Priority Schedule above the San Carlos reservoir on account of which have been paid the full proportionate per acre share of the cost of said purchase.

(3) The right to divert 372,000 acre feet of the waters of the Gila River, during each irrigation season, from the natural flow in said stream at the Ashurst-Hayden and Sacaton diversion dams, as of the date of priority of 1916, and to the extent that such waters are available under said priority – at a total rate of diversion not exceeding 775 cubic feet per second at any time during such season, for the reclamation and irrigation of the 62,000 acres of the irrigable lands of the so-called Florence-Casa Grande Project, or its equivalent, more particularly described as follows:

a. The aforesaid Indian allotments now or hereafter made on the said Indian Reservation, and the said administrative area, amounting in the aggregate to 50,546 acres to the extent that thirty-five sixty-seconds of the herein described water right, which is sufficient for and limited by the needs of 35,000 acres, will reclaim and irrigate the same.

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b. 27,000 acres of land in the private ownership of White persons (also referred

to herein as "White lands") described as follows: [tables of "White lands"]

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That in accord with the Agreement of Land Owners to Induce the Secretary of the Interior to Undertake the Florence-Casa Grande Irrigation Project, etc.' entered into between the owners of said privately owned lands and the United States, it is hereby further specifically ordered, adjudged and decreed that suitable devices for measuring the flow of water available and susceptible of being diverted by the aforesaid dam or dams to the canals of the said Florence-Casa Grande Project (now a part of the San Carlos Project system) shall be maintained and daily or more frequent measurements of said flow shall be made; that the first 300 cubic feet per second or less of water flowing in the river at the said dam or dams, available as a whole under the several rights and priorities of plaintiff, including its immemorial right described and set up in subdivision 1 of this article and the so-called rights by purchase, and susceptible of being diverted for the said project, shall be divided and distributed, less deductions for project canal losses as hereinafter provided, sixty and six-tenths per centum thereof to the Indian lands of said project and thirty-nine and four-tenths per centum to the White lands thereof; that of the next 300 second-feet of water or less thus flowing and available, less deductions on account of losses as aforesaid, fifty-one and seven-tenths per centum thereof shall be apportioned to the said Indian lands, and forty-eight and three-tenths per centum thereof to White lands; that all water available as aforesaid in excess of said 600 second-feet shall be divided, less deductions on account of losses as aforesaid, fifty-six and one-tenth per centum to said Indian lands and to said

privately owned lands, forty-three and nine tenths per centum, except that during periods of high water when it shall be possible and practicable to divert water for the use of the Indian lands within said project, or some of them, by means of the Sacaton Dam, the entire amount of water diverted for the said project by the said Ashurst-Hayden Dam shall be used for the irrigation of privately owned lands and of such of said Indian lands as cannot be adequately supplied from said Sacaton Dam; that furthermore the amounts of water thus apportioned to the White lands within said project shall be distributed to said lands in the following order:

(a) Certain of said lands to the extent of some 9,752.83 acres together with 790 acres in Sections 1 and 2, Twp. 5 S., Range 8 E., G. and S.R.B. and M., being identical with those tracts which are described in the Schedules of Rights and Priorities set out under Article V hereof and identified in said article as applying to the so-called rights by purchase of plaintiff, shall have a call upon the waters available under such apportionment in the order of their priorities as set out in said schedule.

(b) The remainder of said lands, amounting to some 17,247.17 acres, shall have the next three successive calls upon such waters as are available under such apportionment and in the following order:

[table of priorities]

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(c) That the Secretary of the Interior or his agents in dividing the waters of the said Florence-Casa Grande Project shall see that the

losses of water in the whole system of project canals (now a part of the San Carlos Project System) are shared as equitably as may be to the end that, with respect to such losses, no water right under the project shall enjoy any advantage of location, position or otherwise over any other project water right; but losses occurring in the Indian and private canals leading from said project canals shall be disregarded in the division of water hereinabove provided for; and furthermore whenever the quantity of water diverted into the canals of said project shall, in the aggregate, be so small that, after deducting the losses of transmission in the project canals and then dividing the residue between the Indian lands and the lands in private ownership as hereinabove provided for, the share allotted to the Indian rights would be too small to reach the Indian reservation, the Secretary of the Interior, or his agent in charge of said project, shall permit all of said water to be applied to the irrigation of privately owned lands in accordance with their priorities.

(4) The right to divert 603,276 acre feet of the water of the Gila River, during each irrigation season from the natural flow in said stream at the Ashurst-Hayden and Sacaton Dams above described – as of the date of priority of not later than June 7, 1924 (and for the purposes of this decree and for them only as of said date) and to the extent that such waters are available under said priority – at a total rate of diversion not exceeding 1256.5 cubic feet per second at any time during such season, for the reclamation and irrigation of the 100,546 acres of the irrigable lands of the San Carlos Project and for supplying water to the State of Arizona, and towns, villages and municipalities of that state, and federal agencies, as provided in the Act of March 7, 1928, and in the so-called Repayment Contract

bearing date the 8th of June, 1931 said 100,546 acres of project lands being more particularly described as follows:

> (a) 49,896 acres of land within the Gila River Indian Reservation which have been, or may be allotted to individuals among the Indians thereof (also referred to herein as "Indian Lands"), together with 650 acres within said reservation comprising the School Farm, Agricultural Experiment Station and Administrative Area.
>
> (b) 50,000 acres of land in private ownership of white persons (also referred to herein as "White Lands"), made up of such White Lands designated to come into the San Carlos Project by order of the Secretary of the Interior of April 25, 1928, and August 9, 1934, said designated lands being described as follows:

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(5) The right, as of the date of priority of not later than June 7, 1924, – and for the purpose of this decree and for them only as of said date – to store the waters of the Gila River in the San Carlos Reservoir of the aforesaid San Carlos Project by means of the Coolidge Dam (said Reservoir and Dam being situate within the San Carlos Indian Reservation) to the extent of the full 1,285,000 acre-feet capacity of said Reservoir at all times when said waters are available above said dam for such storage under the aforesaid priority; and the right in that relation to accomplish and control the release from said reservoir of the waters so stored and thus reduced to ownership, and to conduct the same down the channel of the Gila River to the Ashurst-Hayden and Sacaton diversion dams of the San Carlos Project and there to recapture and divert, and

control the diversion of, the same by means of said dams for conveyance in the canals leading therefrom to the above described 100,546 acres of the lands of said Project for the reclamation and irrigation thereof, and for the supplementation of amounts available therefor at said dams from the natural stream flow under plaintiffs rights as same are decreed herein, and for State and Federal purposes under act of March 7, 1928 as hereinbefore described.

(6) The right, as against and only against the parties to this cause, to divert from the Gila River 17,950 acre feet of water, – for the irrigation of 2992.5 acres of Indian lands at the Gila Crossing District on said Reservation – each irrigation season at a rate of diversion not exceeding 37.4 cubic feet per second of time, from the waters occurring or recurring in said river beginning at the point where the Southern Pacific Railway crosses said river in Section 13, Township 3 South, Range 4 East of Gila and Salt River Base and Meridian or between said point and a point one hundred feet above where the Salt River empties into the Gila River, at the diversion points on said reservation as now or hereafter located, as for the following dates of priority:

For 954 acres of said lands January 1, 1873.

For 587 acres of said lands January 1, 1876.

For 660 acres of said lands January 1, 1877.

For 139 acres of said lands January 1, 1900.

For 58.5 acres of said lands January 1, 1903.

It is further provided that water rights with the priorities fixed as aforesaid are for the irrigation of said Gila Crossing Indian lands, but subject at all times, to all

rights on said Gila River above said point hereinabove described, and provided also that said rights are subject to the right of the San Carlos project, to divert and use return flows, or water otherwise occurring in the river above said point and the right of said project to pump and otherwise interfere with and control the return flow from the lands within said project.

That certain of the foregoing rights, as listed under items (1), (3) and (4) above are inclusive one of the other so that diversions thereunder do not accumulate, and the amounts in acre feet per season and cubic feet per second stated in the 3rd item include those given in the 1st and those stated in the 4th item include those given in the 1st and 3rd; in each instance representing the total diversion allowable under that priority and those prior thereto as described in said items.

VII

That all Indian lands and all white lands now or hereinafter designated by the Secretary of the Interior as within the San Carlos Project and under said San Carlos Reservoir shall be entitled to share equally in all of the stored and pumped water of said Project in so far as that shall be physically feasible, and said lands shall share equally in all of the water of said Project of every nature as long as the stored and unstored water supply for said Project shall be sufficient for Project needs, and as far as that shall be physically feasible; but when, through lack of stored and pumped water, there shall be an insufficient supply of water for all of the lands of said Project lying under said reservoir, which condition or fact shall be determined by the Secretary of the Interior or his duly

authorized agent, the lands so situated, in addition to their proper share of such stored and pumped waters as may be available to the Project, shall be entitled to and have apportioned to them the unstored flow of the Gila River which is available as a whole, and susceptible of being diverted, for the Indian and White lands of the aforesaid Florence-Casa Grande Project together with the 790 acres in Sec. 1 and 2 T. 5 S., R. 8 E., G. and S.R.B. and M., hereinbefore mentioned, under and in pursuance of the various rights and priorities of the United States decreed herein for said lands, as follows, to-wit: said flow shall be divided between said Indian and White lands and distributed to such lands, whether the same shall be also included in the San Carlos Project or not, in accordance with the apportionment and division ordered and decreed in the third subdivision of Article VI hereof, and any surplus which may remain and be available in said river, under the priorities of plaintiff, for other lands (beyond those of the Florence-Casa Grande Project and said 790 acres) included in San Carlos Project under the priorities of plaintiff and provisions of this decree, shall first go to such of the Indian Lands in the San Carlos Project, and then in equitable proportion to such of the private and public lands thereof as are not also included in the Florence-Casa Grande Project and said 790 acres.

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VIII

That the diversions of water from the Gila River by the so-called upper valleys defendants (parties defendant to whom rights to divert water from the Gila River at points above the San Carlos Reservoir are decreed herein),

comprising the defendant canal companies named below, with the parties defendant named in the Priority Schedule and attached tables who are decreed rights through the canals of said companies and are served thereunder, and certain individual parties defendant who are accredited with rights to divert directly from the stream through private ditches, to-wit:

> Albert Canal Company, Billingsley Extension Canal Company, Black & McClerskey Canal Company, Brown Canal Company, Colmenero Canal Company, Colvin-Jones Canal Company, Cosper & Windham Canal Company, Cosper & Windham Extension Canal Company (Under contract whereby Cosper & Windham Canal Company makes actual diversion) Curtis Canal Company, Dodge-Nevada Canal Company, Duncan Canal Company, Fort Thomas Consolidated Canal Company, Fourness Canal Company, Graham Canal Company, Moddle Canal Company, Montezuma Canal Company, San Jose Canal Company, Sexton Canal Company, Shriver Ditch Company, Smithville Canal Company, Sunflower Canal Company, Sunset Canal Company, Tidwell Canal Company, Union Canal Company, Valley Canal Company, York Canal Company, York Cattle Company;
>
> R. H. Angle, J. H. Brown, T. D. Burton, W. C. Craufurd, J. W. Foote, R. C. Gilleland, J. H. Henderson, C. C. Hester, F. E. Ross, R. Sexton, Laura Short;

and/or their predecessors in interest, for the irrigation of the lands described in said Priority Schedule made part of Article V hereof; since their inception have been made under rights which were and are junior and subject to certain extensive rights of plaintiff to divert the waters of

said stream at points below the diversions of said defendants and also below the San Carlos Reservoir, which said rights of plaintiff are set down and referred to in said Priority Schedule, but are further identified and particularly described in Article VI and VII hereof, it being evidenced thereby that the earliest right of plaintiff is prior in time to all and every of the rights of said defendants, and certain of plaintiffs other rights are prior in time to certain of the rights of said defendants; that, however, plaintiff and said defendants, in recognition of the desirability of making it practicable for said defendants to carry on the irrigation of said upper valley lands to the extent to which the areas to which their said rights apply heretofore have been irrigated and so that the said San Carlos Act shall inure in part to their benefit and this suit may be compromised and settled, have agreed that the following provisions shall be and they are hereby embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to-wit:

(2) That on the first day of January of each Calendar year, or as soon thereafter as there is water stored in the San Carlos Reservoir, which is available for release through the gates of the Coolidge Dam for conveyance down the channel of the Gila River and for diversion and use on the lands of the San Carlos Project for the irrigation thereof, then the Water Commissioner, provided for herein, shall, to the extent and within the limitations hereinafter stated, apportion for the ensuing irrigation year to said defendants from the natural flow of the Gila River an amount of water equal to the above described available storage, and shall permit the diversion of said amount of water from said stream into the canals of said

defendants for the irrigation of said upper valleys lands in disregard of the aforesaid prior rights of plaintiff used on lands below said reservoir; the diversion of said amount of water by said defendants to be in accord with the priorities as between themselves stated in said Priority Schedule and for the irrigation of the lands covered by the rights accredited to said defendants in said Priority Schedule and the quantity of water permitted to be taken by said defendants in disregard of prior rights of the United States below is in addition to and not exclusive of the rights of said defendants to take from the stream in the regular order of their priorities as shown by the Priority Schedule, but of course within the duty of the water limitations of this decree; that if and when at any time or from time to time in any year, water shall flow into said reservoir after said date of first apportionment and shall be stored there and become added to the available stored water in said reservoir, the said commissioner shall make further and additional apportionments to said defendants of the natural flow of said stream as the same is available at the diversion points of said defendants, which said apportionments shall in turn correspond with and be equivalent in quantity to the amount of such accessions or newly available stored water supply; that in calculating apportionments of the stored water supply the Water Commissioner shall make appropriate deductions for losses for evaporation, seepage or otherwise that may be suffered between the time of the apportionment and that of the diversion of a corresponding quantity of water

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from the stream; that such apportionments, corresponding with net accessions during each annual period after first

apportionment, shall be made by said Water Commissioner at least as frequently as once per calendar month (provided accessions to stored supply have occurred during that period) and at such more frequent intervals as the conditions in his judgment may demand – his decisions in these regards to be subject to summary review by the Court as provided in Article XII hereof – and said Water Commissioner shall see to it that his said apportionments, when made, forthwith shall be placed of record herein and so posted or published as to inform all interested parties in that regard with reasonable promptness and despatch [sic]; it being herein explicitly provided that no apportionment or apportionments, made during any calendar year, shall carry over or be available in any manner for the succeeding year; that the diversions made by said defendants of the natural flow of the Gila River thus apportioned to them in disregard of the said prior rights of plaintiff shall be regulated by the Water Commissioner (under the authority and powers given him by this decree and/or by such further orders of the Court as may be made in that relation) in accord with the rights and priorities accredited to each of said defendants in said Priority Schedule, provided always that such diversions shall be limited to the amount of water then apportioned, as aforesaid, and in any event, during each irrigation season, do not and shall not exceed the total amount of water called for under the right accredited in said Priority Schedule to any given defendant, namely; 6 acre feet per acre for the irrigation season as defined in Article V hereof; and provided further that the drafts on the stream by the upper valleys defendants shall be limited to a seasonal year diversion which will result in an actual consumptive use from the stream of not to exceed 120,000 acre feet of water; said consumptive use made in any

seasonal year shall be determined by adding the recorded flows at a gauging station located in the Gila River at Red Rock Box Canyon above the heading of the Sunset Canal in New Mexico and a gauging station located in the San Francisco River immediately above its confluence with the Gila River and deducting from said sum the recorded flows at a gauging station located on the Southern Pacific Railway bridge crossing the Gila River near Calva, Arizona; and the Water Commissioner shall determine what diversions are permissible and reduce diversions in the inverse order of their priorities when and to the extent necessary to accomplish the aforesaid result. The aforesaid measurements shall include the whole flow of the stream, including floods, at the three points of measurement, and no allowance shall be made for accretions or additions to the flow between the point of measurement at Red Rock Box Canyon, and the confluence of the Gila and San Francisco Rivers, and in turn between the confluence of the Gila and San Francisco Rivers, and the aforesaid gauging station at the Southern Pacific Railway bridge. Said method of measurement is adopted as sufficiently accurate for practical purposes and as better suited for administering this decree than any more refined method of determining actual consumptive use.

(3) Upon agreement made by the owner of any right set forth in the Priority Schedule for land in the Safford Valley water may be diverted by the owner of land in the Duncan Valley within the duty of water in this decree set forth and within the apportionment of water for said Duncan Valley land in disregard of such Safford Valley right or rights, and that such waiver shall in no way deprive the Safford Valley lands thus waiving of their full apportionment of water herein provided for based on

water stored in the San Carlos Reservoir or their full right to take from the stream, in accordance with their priority and within the duty of water fixed by the decree as against water rights of the United States held on account of the San Carlos Project, but the right of the United States to insist upon its priorities as defined and modified herein as against Duncan Valley Lands shall not be abridged by this provision.

(4) That water released at the will of the plaintiff and for the purposes of the plaintiff from the San Carlos Reservoir at any time after the date of this decree other than for the proper irrigation of 80,000 acres of land or its equivalent in the San Carlos Project, shall be considered as stored in the San Carlos Reservoir at and after the date of such releases, and available as a basis for the above described apportionment of the natural flow to said defendants as it would be if such withdrawals had never been made.

(5) PROVIDED ALWAYS, that if by reason of lack of available storage in the San Carlos Reservoir no apportionment of the natural flow of said river is or can be made available to said defendants, then the diversions of said defendants, of or as soon as apportionments previously made to them have been consumed, shall no longer be made in disregard of the prior rights of plaintiff below said San Carlos Reservoir, but shall instead be made under and in accord with the rights and priorities set down in Article V, and the Priority Schedule made part hereof, and Article VI of this decree to-wit: in accord with their several priorities as same are set down in said Priority Schedule and subject to the prior rights of plaintiff as same are referred to therein and further described in Article VI of this decree.

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IX

(1) That the defendant Kennecott Copper Corporation shall be entitled, as of the dates of priority set down in the Priority Schedule made part of Article V hereof, for industrial, municipal, domestic and related beneficial purposes, to divert from the underground waters of the Gila River by means of its pumps, as same are or may be located within the lands described in said Priority Schedule under the heading "Point of Diversion," during the annual period beginning January 1st of each year, the amounts of water stated in said schedule, at the rate of diversion in cubic feet per second there given; subject, however, to the proviso that the total amount of water diverted and maximum rate of diversion, under the rights for such purposes accredited to said defendant in said Priority Schedule as of the priority dates of 1878, 1879, 1880, 1884, 1885, 1887, 1890, 1895, 1906, 1908, and 1909, shall not exceed the quantity of water in acre feet per annum or rate of diversion in cubic feet per second stated for the right of 1909, to wit: 16,221 acre feet and 22.22 cubic feet per second; that the rights for industrial, municipal, domestic and related purposes accredited to said defendant as of the dates of priority named below were first initiated, and thereafter perfected, by the diversion and application of the waters of the Gila River, through canals leading from the stream, to the irrigation of those certain acreages of the lands described below which are set down opposite said dates of priority, which said dates respectively represent the year in which said acreages were first irrigated, to-wit:

Date of Priority	Number of Acres	Area Containing Lands Thus Irrigated
1878	65.00	SE1/4 and SE1/4 SW1/4, Section 9;
1879	95.00	S1/2? SW1/4, Section 10;
1880	130.00	NW1/4 SW1/4, S1/2? SW1/4 and SW1/4 SE1/4, Section 14;
1884	165.00	SE1/4, NE1/4 and NW1/4 Section 15;
1885	60.00	NE1/4 Section 16; and
1887	60.00	N1/2 NW1/4 and N1/2 NE1/4 Section 23;
1890	10.00	
1895	40.00	
1906	15.00	
1908	153.00	All in Township 5 South, Range 15 East of the Gila and Salt River Base & Meridian

That the use for irrigation under said rights, when the pumps and plant of said defendant were put in operation in the year 1909, was changed and transposed into uses for industrial, municipal, domestic and related purposes, and the waters called for under said rights and priorities, or so much thereof as was available, since have been diverted from the stream or the underground waters thereof by means of the pumps of said defendant and continuously and beneficially applied to said purposes;

(2) That the requirements of said defendant each year for the above described purposes demand that it divert from the underground waters of the Gila River, in so far as same can be made available in that relation, at the continuous rate of ten thousand gallons per minute, or 22.22 cubic feet per second; same being equivalent by volume measurement to a maximum of 16,221 acre feet per annum; that prior to the construction of the San Carlos Reservoir and the storage of water therein the natural flow of the Gila River at and/or in the vicinity of the reduction plant and pumps of said defendant maintained an underground water plane, which when pumped from to meet the said requirements of defendant, had averaged an approximate minimum elevation, as gauged at said defendant's test well at that place, of 1920 feet above sea level (Nevada Consolidated Copper Company datum) and an approximate maximum elevation of 1930 feet above sea level (datum idem); that said diversions by said defendant then were, and since to the extent undertaken have been, made under rights which were and are junior and subject to certain extensive rights of plaintiff to divert the waters of the Gila River at points below the diversions of said defendant, and also below the San Carlos Reservoir, which said rights of plaintiff

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are set down and referred to in Article V hereof and the Priority Schedule included therein, and further defined in Article VI and VII hereof, it being evidenced hereby that the early right of plaintiff is prior in time to all and every of the rights of said defendant and certain of plaintiff's other rights are prior in time to certain of said defendant's rights and thereby are credited with dates of priority earlier than those of said defendant; that, however, plaintiff and

defendant by way of consent hereto, in recognition of the desirability of making it practicable for said defendant to continue and further carry on its operations to the extent of its aforesaid requirements and so that this suit may be compromised and settled, have agreed that the following provisions shall be embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to-wit:

(3) That said defendant shall be entitled to divert, by means of its said pumps as they now exist or may be replaced, so much of the underground waters of the Gila River as may be available at its said pumps and as will meet its said requirements – but not to exceed the amount of 16,221 acre feet during each annual period reckoning from January 1st of each year as aforesaid, and limited to a maximum rate of diversion of 10,000 gallons per minute, viz. 22.22 cubic feet per second – in disregard of the said prior diversions rights of plaintiff below said San Carlos Reservoir as same are set out and defined in this decree as aforesaid; that if during those periods when no appreciable releases of water from the San Carlos Reservoir are being made into the channel below the Coolidge Dam, the said diversions of defendant by means of said pumps (limited to the amounts required for beneficial application to the above described industrial, municipal, domestic and related purposes and in any event to the said 16,221 acre feet per year and 22.22 cubic feet per second) shall cause the pumping water plane to fall below 1920 feet above sea level, as gauged at said test well of defendant (Nevada Consolidated Copper Company datum), or some other mutually agreed upon point and datum, then, if there is any natural flow in the Gila River at the point where said

stream enters the San Carlos Reservoir, so much thereof (or so much as is available if the amount is insufficient) as will bring the level of said pumping water plane, as gauged at said test well of defendant, or other point aforesaid, to the average of the approximate maximum and minimum elevations aforesaid to wit: 1925 feet above sea level (datum idem), will be allowed to flow through said reservoir into the channel below – if the storage level in said reservoir is high enough physically to permit its release through the Coolidge Dam – said operations to be of simultaneous character in that releases through said Coolidge Dam, equivalent to the natural flow entering the reservoir or such portion thereof as may be sufficient for the above described purpose, shall be made forthwith when it is determined (mutually by the plaintiff and defendant, or in case of disagreement by the Water Master, whose decision may be reviewed as provided in Article XII hereof) that the pumping water plane, under the conditions above described, has fallen below the 1920 foot level aforesaid; that such releases of natural flow through the Coolidge Dam shall be accomplished so as to make the most practical and workmanlike use of the amount available for the purposes thereof; taking into consideration the vital necessity of avoiding in so far as possible the waste of water into the stream below the gravels in which the pumping water plane is being maintained;

(4) That the diversions of water from the Gila River by said defendant and its predecessors in interest for the irrigation of the lands described in the Priority Schedule for which said defendant is accredited rights for irrigation as of the dates of priority of 1908, 1916, and 1926, since their inception have been made under rights which were and are junior and subject to those certain and extensive

rights of plaintiff to divert the waters of said stream at points below the said diversions of defendant; which said rights of plaintiff are set down and referred to in Article V hereof and the Priority Schedule included therein and are further defined in Article VI and VII hereof; it being evidenced thereby that the early right of plaintiff is prior in time to all and every of the rights of said defendant and certain of plaintiff's other rights are prior in time to certain of said defendant's rights, and thereby are accredited with priorities which are earlier than the aforesaid rights of defendant; that, however, plaintiff and defendant, by way of consent hereto and in recognition of the desirability of making it practicable, in so far as possible, for said defendant to carry on the irrigation of its said lands to the extent of the acreages to which its said rights of 1908, 1916 and 1926 apply, and so that this suit may be compromised and settled, have agreed that the following provisions shall be embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to-wit:

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(5) That when, under the rule and method of apportionment stated in Article VIII of this decree, there is apportioned to the so-called upper valleys water users amounts of water from the natural flow of the Gila River corresponding with the available storage in the San Carlos Reservoir, then there also shall be apportioned to the defendant Kennecott Copper Corporation, from the natural flow of said river as hereinafter defined, for the irrigation of its said lands, an amount of water per acre thereof corresponding with the amount per acre apportioned to said upper valleys as aforesaid; and thereupon, said

defendant shall be entitled to divert – in disregard of the said prior diversion rights of plaintiff below as same are set out and defined in this decree as aforesaid – at the points of diversions and by means of the ditches ascribed to it in the Priority Schedule, so much of the natural flow of the Gila River, limited always to the amount of water then apportioned to it as aforesaid, as can be beneficially applied to the irrigation of the lands to which said rights apply; said diversions as of course to be limited in any event to the amounts of water in acre feet per irrigation season and rates of diversion in cubic feet per second stated for said rights in the Priority Schedule; that in as much as the waters flowing in the Gila River at defendant's said points of diversion, during a great portion of the irrigation season, will be made up in large measure of stored water which has been released from the San Carlos Reservoir and is being piloted down the stream channel to the diversion dams and distributing canals of the San Carlos Project, the natural flow available as aforesaid to said defendant, under the limitations of said apportionment, shall be gauged by and deemed to correspond with the natural flow of the Gila River and San Carlos River at the points where said streams enter the San Carlos Reservoir, plus such contributions thereto between the Coolidge Dam and said diversion points of defendant as may occur, but subject to such drafts upon such total as may be made by owners of rights of diversion under this decree prior to said rights of defendant (if any there are) between said Coolidge Dam and said diversion points of defendant.

(6) PROVIDED ALWAYS, that the foregoing provisions of this Article IX are hereby explicitly made subject to the proviso that whenever under Article VIII hereof, by

reason of lack of available storage in the San Carlos Reservoir and the consumption of previous apportionments thereunder, no apportionment of the natural flow of said river is or can be made available to the so-called upper valleys defendants in disregard of the prior rights of plaintiff below said reservoir, and therefore diversions by said defendants and plaintiff are required to be made under and in accord with the rights and priorities set down in Article V (and the Priority Schedule therein) and VI of the decree, then the diversions of defendant, as against all the other parties in this cause, whether for industrial, municipal, domestic and related purposes as described in subdivisions (1) to (3) above – or for irrigation as described in subdivisions (4) and (5) if or when its apportionment in that relation also has been consumed – shall be subject to and be made in accord with its priorities as same are stated in the Priority Schedule and not otherwise, saving and excepting only that its diversions for said industrial, municipal, domestic and related purposes as against plaintiffs prior rights of diversion below shall still be regulated and controlled as provided in subdivisions (2) and (3) of this Article; subject to the further proviso, however, that the natural flow of the Gila River as measured where it enters the San Carlos Reservoir, or drafts upon it in conformity with priorities against later rights above, will not be available in any event below said reservoir unless the storage level therein is sufficiently high to permit its release through the Coolidge Dam. It is further provided that the pumped diversions of said defendant when being made under subdivisions (2) and (3) of this Article, at times of greater peak loads, may exceed by 10% the rate of 22.22 cubic feet per second stated above, if water therefor is available at said pumps, but that the total diversions for any year (January 1st to

December 31st inclusive) in such event shall still be limited to 16,221 acre feet.

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X

(1) That the diversions of water from the Gila River by defendants Joseph J. Anderson, Grady L. Herring and T. H. B. Glasspie, and their predecessors in interest for the irrigation of the lands described in the Priority Schedule made part of Article V hereof, for which said defendants are accredited rights for irrigation as of the dates of priority named in said schedule, since their inception have been made under rights which were and are junior and subject to those certain and extensive rights of plaintiff to divert the waters of said stream at points below the said diversions of defendants; which said rights of plaintiff are set down and referred to in Article V hereof and the Priority Schedule included therein and are further identified in Articles VI and VII hereof, and thereby are accredited with priorities which are earlier than the aforesaid rights of defendants; that, however, plaintiff and said defendants, by way of consent hereto and in recognition of the desirability of making it practicable in so far as possible for said defendants to carry on the irrigation of their said lands to the extent of the acreages to which their said rights apply and so that this suit may be compromised and settled, have agreed that the following provisions shall be embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to wit:

(2) That when, under the rule and method of apportionment stated in Article VIII of this decree, there is

apportioned to the so-called upper valleys water users amounts of water from the natural flow of the Gila River corresponding with the available storage in the San Carlos Reservoir, then there also shall be apportioned to said defendants, from the natural flow of said river as hereinafter defined, for the irrigation of their said lands, an amount of water per acre thereof corresponding with the amount per acre apportioned to said upper valleys as aforesaid; and thereupon; said defendants shall be entitled to divert – in disregard of the said prior diversion rights of plaintiff below as same are set out and defined in this decree as aforesaid – at the points of diversion and by means of the ditches ascribed to them in the Priority Schedule, so much of the natural flow of the Gila River, limited always to the amount of water then apportioned to them as aforesaid, as can be beneficially applied to the irrigation of the lands to which their said rights apply; said diversions as of course to be limited in any event to the amounts of water in acre feet per irrigation season and rates of diversion in cubic feet per second stated for said rights in the Priority Schedule; that in as much as the waters flowing in the Gila River at defendants' said points of diversion, during a great portion of the irrigation season, will be made up in large measure of stored water which has been released from the San Carlos Reservoir and is being piloted down the stream channel to the diversion dams and distributing canals of the San Carlos Project, the natural flow available as aforesaid to said defendants, under the limitations of said apportionment, shall be gauged by and deemed to correspond with the natural flow of the Gila River at the point where said stream enters the San Carlos Reservoir, plus such contributions thereto between the Coolidge Dam and said diversion points of defendants as may occur, but subject to

such drafts upon such total as may be made by owners of rights of diversion under this decree prior to said rights of defendants (if any there are) between said Coolidge Dam and said diversion points of defendants.

(3) PROVIDED ALWAYS, that the foregoing provisions of this Article X are hereby explicitly made subject to the proviso that whenever under Article VIII hereof, by reason of lack of available storage in the San Carlos Reservoir and the consumption of previous apportionments thereunder, no apportionment of the natural flow of said river is or can be made available to the so-called upper valleys defendants in disregard of the prior rights of plaintiff below said reservoir, and therefore diversions by said defendants and plaintiff are required to be made under and in accord with the rights and priorities set down in Article V (and the Priority Schedule therein) and VI of the Decree, then the diversions of the defendants above named, as against all the other parties in this cause – if or when their apportionment in that relation also has been consumed – shall be subject to and be made in accord with their priorities as same are stated in said Priority Schedule and not otherwise; subject to the further proviso, however, that the natural flow of the Gila River, as measured where it enters the San Carlos Reservoir, will not be available below said reservoir on occasions when the storage level therein is not sufficiently high to permit its release through the Coolidge Dam.

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XI

That the lands within the Gila River watershed for the irrigation of which rights are decreed herein are arid

or semi-arid in character and require irrigation in order that crops of value may be produced thereon; that except as herein specifically provided no diversion of water from the natural flow of the stream into any ditch or canal for direct conveyance to the lands shall be permitted as against any of the parties herein except in such amount as shall be actually and reasonably necessary for the beneficial use for which the right of diversion is determined and established by this Decree, to-wit: shall be made only at such times as the water is needed upon their lands and only in such amounts as may be required under the provisions hereof for the number of acres then being irrigated; that in cases where by this Decree water is allowed to be diverted by and through any ditch by the owner thereof for another party, the terms of the contractual relations existing between them are not intended to be determined herein; that whenever the total area under a particular canal is decreed more than one water right, each having the same or different priorities or in its different parts having different rights and priorities, the total area may have used upon it all of its several rights in the order of their priorities, subject only to the requirement that no greater net draft on the stream be made than if each right in the order of its priority were used only on the particular lands for which it was originally acquired or reserved; that rotation, which is a well known, recognized and effective practice in irrigation administration (constituting in effect the combining of flows allowed to be diverted from a given stream under two or more rights so as to provide for the alternate use of more adequate irrigation heads as between neighboring or other ditches taking from such stream), shall be permitted at all times and shall be required whenever necessary in order to obtain reasonable economies in the use of water or in order

to give to each ditch or water user a more advantageous method of irrigation, providing that such rotation shall not injuriously affect any of the rights determined or allowed by this decree; that the Water Commissioner provided for herein shall arrange for and enforce such rotation, but shall consult with, and endeavor to obtain the agreements of, such water users as in his judgment should resort thereto, and shall embody his action in this regard into such reports as he may make or be required to make to the Court herein; that if no valid objection thereto be made by other water users, an owner of any right decreed herein, when the allowable diversion thereunder in the judgment of the Water Commissioner does not constitute an adequate irrigation head for his lands, may with or without agreement for rotation, when permitted by said Water Commissioner, divert a larger head or flow into his ditch for short periods of time in lieu of the smaller flow allowed to him under his said right providing always that such use shall not exceed for the irrigation season the amount in acre-feet herein specified and allowed to be diverted from the stream for his lands; that appropriations and priorities of the same date rank as having rights of the same standing, and as having a simultaneous call upon the stream source in the proportion which said rights, as decreed herein, bear to each other in amounts entitled to be diverted thereunder; that any of the parties to whom rights to water have been decreed herein shall be entitled, in accord with applicable laws and legal principles, to change the point of diversion and the places, means, manner or purpose of the use of the waters to which they are so entitled or of any part thereof, so far as they may do so without injury to the rights of other parties as the same are defined herein.

XII

That a Water Commissioner shall be appointed by this Court to carry out and enforce the provisions of this decree, and the instructions and orders of the Court, and if any proper orders, rules or directions of such Water Commissioner, made in accordance with and for the enforcement of this decree, are disobeyed or disregarded he is hereby empowered and authorized to cut off the water from the ditch then being used by the person so disobeying or disregarding such proper orders, rules or directions; promptly reporting to the Court his said action in such case and the circumstances connected therewith and leading thereto; that whenever the necessities of the situation appear to the Court so to require, the Court shall authorize the employment by the Water Commissioner of such person or persons to assist that officer as to the Court may seem necessary to carry out properly the provisions of this decree and the orders of the Court; that the term of employment, expenses and compensation of said Water Commissioner and his assistants, the payment thereof and the means and methods for securing funds with which to pay the same, shall be fixed by orders which the Court may hereafter from time to time make; that any person, feeling aggrieved by any action or order of the Water Commissioner, in writing and under oath, may complain to the Court, after service of a copy of such complaint on the Water Commissioner, and the Court shall promptly review such action or order and make such order as may be proper in the premises; that the owner or owners of each ditch or canal herein authorized to divert water from the natural flow of the Gila River for direct conveyance to and irrigation of lands, unless specifically excused by the Court or Water Commissioner, shall at his own expense install

and at all times maintain at any appropriate place at or near the head of said ditch,

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a reliable and readily operated regulating headgate and a measuring box, flume or other device which may be looked and set in position – the same to be approved by the Water Commissioner – so that the water diverted into said ditch or canal at any and all times may be regulated and measured; that upon failure of any owner or owners to install structures of the above described character on or before one year from the date of this decree or on or before such different day as the Court or Water Commissioner shall set or determine – after due notice from the Water Commissioner so to do – the said Water Commissioner is herein authorized to cut off diversions of water into said ditch or canal until such devices and structures shall be installed and maintained.

XIII

That each and all of the parties to whom rights to water are decreed in this cause (and the persons, estates, interests and ownerships represented by such thereof as are sued in a representative capacity herein), their assigns and successors in interest, servants, agents, attorneys and all persons claiming by, through or under them and their successors, are hereby forever enjoined and restrained from asserting or claiming – as against any of the parties herein, their assigns or successors, or their rights as decreed herein – any right, title or interest in or to the waters of the Gila River, or any thereof, except the rights specified, determined and allowed by this decree, and each and all thereof are hereby perpetually restrained and

enjoined from diverting, taking or interfering in any way with the waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters of the Gila River or any part thereof, so as in any manner to prevent or interfere with the diversion, use or enjoyment of said waters by the owners of prior or superior rights therein as defined and established by this Decree; that nothing herein shall prejudice the rights of any of the parties hereto or of their grantees, assigns or successors in interest, under any transfer or legal succession in interest after the commencement of this action, to any of the rights hereby adjudicated; that except as hereinbefore mentioned or otherwise stated, the provisions of this Decree shall bind, and inure to the benefit of, the grantees, assigns and successors in interest of the owners of rights and parties hereto, whether substituted as parties or appearing in this case or named herein or not; that the several parties to this suit shall pay their own costs in this action as directly incurred or authorized by them respectively, provided that any compensation of the Water Commissioner, or amounts shown to be coming to him or the reporter, if any there be, shall be paid in such manner, at such times and by such parties as may be ordered by the Court; that the Court retains jurisdiction hereof for the limited purposes above described, this decree otherwise being deemed a final determination of the issues in this cause and of the rights herein defined.

ALBERT M. SAMES,

Judge

Done in Open Court this twenty ninth day of June, 1935.

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STIPULATION FOR AND CONSENT TO THE ENTRY OF A FINAL DECREE IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA IN THE CASE OF UNITED STATES OF AMERICA, V. GILA VALLEY IRRIGATION DISTRICT, ET AL.

Come now the parties hereto, either in person or by their solicitors, and inform the Court that they have reached a settlement of the issues in this cause and have adjusted and settled their respective claims as between each other; that they have set up in the within and foregoing decree the respective rights of all parties hereto, and request the Court to adopt said decree as its finding herein and that it be entered as its final decree in this cause, settling and adjudicating the rights of the parties hereto.

For the United States of America

HOMER CUMMINGS,

The Attorney General

HAROLD L. ICKES,

The Secretary of the Interior

CLIFTON MATHEWS, F. E. FLYNN,

Clifton Mathews, Esq. June 24, 1935

United States Attorney, Solicitors for the plaintiff April 11, 1935

GERTRUDE M. CONVERSE,

Gertrude M. Converse, Solicitor for the San Carlos Irrigation and Drainage District, defendant heretofore ranged in

interest, on the side of the plaintiff, and for the following other defendants:

Archie L. Bartlett; Fred W. Bassler; Maude M. Bassler; George W. Burgess; Louis Cathemer; Hazel A. Converse; Eldora Curry; Roland Curry; Salvadore S. Feliz; Juan S. Feliz; Manuel S. Feliz; Pedro S. Feliz; J. J. Fraser; F. P. Jamieson; J. C. Jamieson; W. O. Kidder; Edith Knappenberger; Frank Knappenberger; Ed Lacy; Elizabeth M. Martin; Rolland H. Moorehouse; L. S. Nafziger; M. N. Nafziger; Leon M. Nowell; George W. Smith; C. H. Southworth; Dugald Stewart; James R. Treat; Louise M. Trekell; and Don A. Trekell.

APPENDIX 2

In the District Court
of the United States
in and for
The District of Nevada

– IN EQUITY, DOCKET NO. A3 –

The United States of America
Plaintiff

-vs.-

Orr Water Ditch Company, et al.
Defendants

FINAL DECREE

In the District Court of the United States
in and for the District of Nevada
In Equity, Docket No. A3
The United States of America, Plaintiff

vs.

(A) Daisy Adams, successor to George Imes and Andrew Drake (435); Henry Brewster Adams and Edna R. Adams (380), Aguerrebere and Marinelarina, successors to Coopers (66) E.R. Albee and Leora Albee, successors to William Pierson (638); A.E. Albers (163), Mrs. P.J. Allen (562), W.O. Allen or successors, successors to J.W. Coulter (456); A.A. Almgren (572), H.F. Alps (367), James Alt and Susan Alt Estate, succeeded by Charles W. Mapes (601) C.J. Anderson, successor to Mary De Remer (445); Henry Anderson (335-336), Anderson and Lee, executors, P.S. Jensen Estate (375); Venanzio D. Andrea and Attilo Deini, successors to J.B. McCullough (345); Louis Anelli, intervenor (135); John Aratzabel, successor to F.M. Rowland (398); Eugenio Arbico, successor to Maude Menardi (501); Mrs. Louise Arden (63), James Atcheson and L.R. McKenzie, successors to A.L. Laughton, intervenor, and to George Christensen (4[illegible]); G.B. Avansino (184, 214), G.B. Avansino (270, 368); John Avansino, succeeded by L.M. Christensen (587,608); Lazzaro Avansino (143), Louis Avansino, succeeded by Pasquale Capurro (466) and Peter Finn and co-owners (468); Luigi Avansino, succeeded by R.T. Jenkins (238); P.G. Avansino, successor to S. Martinengo (413); F.V. Avilla, intervenor, successor to J.L. Wollam (119); Antonio Azaveda, succeeded by George Grose (327-328);

(B) Ella M. Bailey, formerly Ella M. Smith, and Viola M. Sauer – (655-656-657-658-659-675); H.H. Bailey, successor to Mrs. Kate Brackin (418); Isaac N. Bakeless (209-210), Henry B. Baker (86), Angelo Balsi (211-212), Bank of Nevada Saving and Trust Company, incorporated, H.A. Banta, successor to L.M. Christensen (513); Ben Barbash and Louis Cohn, successors to J.J. Lyons (593); G.C. Barber (156½); Alessandro Baroli (178½-205) successor to Mary De Remer (256); Mrs. G.A. Bartlett (451), J.J. Barton, succeeded by Joe Ryans and E. Hawkins (154); Vic Basso, intervenor (134); Mrs. Anna Bates (412-505); Julien Bazin (279), Mrs. C. Berg (36), D. Bergerin (34), Mary G. Bellamy, succeeded by A.H. Ramelli (294); Brune Bernard, succeeded by A. Bonamici, G. Sorani and S. Sorani (581); Jean or John Bernard (420), Louis W. Berrum (145-177-178-204-260), succeeded by Carl Elges (173); Walter Berry, succeeded by Ginlio Quilici, Ernesto Giannattei and Narciso Matteoni (470-471); H. Bersani, intervenor (83) and successor to Garavanti and Pessi (84); Angela Besso, Carrie Besso, Emery Besso and Frank Besso, intervenors, successors to Augustino Besso (111-112-194); Joseph Bianchini (570), E.L. Bickford, succeeded by Mrs. Ed. Harvey (540); George R. Bidleman, succeeded by Pete Laiolo, William Capurro and Louis Capurro (472-473); Nick Bisagno (315), J.T. Bisagno, Ferdinand Bisagno and T.J. Bisagno, successors to William H. Frazer (319); F.D. Black, successor to J.P. Kane (437); J.M. Blood (285); George Blundell (354-355), T.H. Blundell, succeeded by J.P. Reynolds (630); T.H. Blundell, successor to E.J. Posvar (637); Mrs. O.J. Boies, succeeded by E.C. Kylander (539); Andy Bonamici and G. Sorani and S. Sorani, successors to O.C. Ross (581); Antone Borsi and Steve Borsi, successors to E.A. Brainard, F. Roberti and C.T. Mullins (53); Mrs. C.E. Boswell, successor to J. Duncan (564),

Giovanni Bottini (520), Mrs. Bessie Bovee, succeeded by J.H. Schroeder (492); Myrtle B. Boynton, Alice Boynton, John W. Boynton, Jr., Clinthy C. Boynton, or successors, (476 to 479); Mrs. Kate Brackin, succeeded by H.H. Bailey (418); Jeanette Bradley (266-479), Celia Bradshaw (275), E.A. Brainard, succeeded by Steve Borsi and Antone Borsi (53); E.A. Brainard, succeeded by M.C. Galvin and J. Galvin (323); R.N. Brannin, succeeded by C.L. Steiner (557); T.M. Branton (699); Mary Brewington, formerly Mary De Remer (439); Trannie Bridgeman (223), Louis Britshgi (351-352-353); Charles W. Brooks and Alfred Peckham, successors to Christopher J. Finn and Peter Finn (474-475); Adna Brown, Albert Brown, Mrs. Elizabeth Brown and Laura Brown (715); Jessie Bryan, John S. Bryan, successors to H.F. Alps (366); J. Burke and P. Burke, succeeded by Felix Turrillas and Amado Yriarte (288); A.A. Burke and F.D. Burke (493), Jeanette Burke and James Burke, succeeded by Holcomb Brothers (706).

(C) John Cadlini and Joe Cadlini (631), Cafferata and Pearson (244½), Mrs. Ed. Calhoun, successor to Irene Poole and James Poole (551); Mrs. Annie Callahan, Mary Ann Callahan (650-651); James Callahan (648'9) and as successor to Degiovanni Brothers, intervenors, (78-188); Phillip Callahan (647-'7½); George H. Calligan, successor to William Neasham (568); Mrs. William Calligan, succeeded by A. Van Derhoof (536); Ernesto Canepa intervenor, successor to A. Chinsini and R.W. Parry (51-101); A. Capurro, successor to Warren G. Rice (594); Angelo Capurro, succeeded by L.A.L. Green (661-673-674); Bartolome Capurro, successor to G.B. Questa (405-406); B. Capurro and John Capurro or Gustino Capurro (52-108-146-192-52½-727-727½); Joe Capurro, successor to Steve Cappurro, intervenor (136); Louis Capurro and William

Capurro, successors to George R. Bidlemen (472); Pasquale Capurro (459); Pasquale Capurro, successor to Louis Avansino (466); S. Capurro, (171-172); Stefano Capurro and David Gardella, successors to D. Zolezzi (736); Stephano Capurro, succeeded by L.F. Johnson (50-97); Steve Cappurro, intervenor, succeeded by Joe Capuro (136); William Capurro, successor to George R. Bidleman (472); Samuel Caramella (465), G. Cardona (504), Joe Carmella, successor to Nevada United Mines Company, a corporation (324); Matie D. Carter, succeeded by D.C. Wheeler, Inc., (182-207); Mary Casazza, Joseph Casazza, and Toni Casazza, successors to Paulo Casazza, Joe Casazza, David Casazza and Toni Casazza (76-187-718); G. Casci (582-619); Pietro Casinelli (391-392-393-403); P. Casinelli, successor to John Gotalli (583); Casquet (37); Charles E. Catoir and Joe P. Strathman, successors to S.J. Prose (397); Mrs. Crissie A. Caughlin (150-150½-230-726½), Central Pacific Railway Company, succeeded by Southern Pacific Company, (526-527); D. Ceresola (642), Estate of Louis M. Ceresola, J.A. Ceresola, W.J. Ceresola, successors to E. Olinghouse (639-640-643-645); G. Ceresola, successor to George Gould, (534); A. Cerfoglio, successor to C.F. Cooper (183-213); D. Cerfoglio and P. Cerfogio, successors to Mrs. B. Ghiggeri or Madeline Ghiggeri (70); L. Cerveri and G. Cerveri, intervenors (89); A.E. Cesmatt (161), Moses Chase (284), A. Chinsini, succeeded by Ernesto Canepa (51-101); Mrs. Alice Chism (271-369-370), C.J. Christensen, successor to Stewart McKay (610); George Christensen, succeeded by Atcheson and McKenzie, successors to A.L. Laughton, intervenor (48); George Christensen (166); J.H. Christensen or successor to Mary J. Howard (717); L.M. Christensen, successor to John Avansino (587-608); L.M. Christensen (494-495), L.M. Christensen, succeeded by H.A. Banta

(513) and by A.L. Jensen (512); Nels Block Christensen (330-569), J.E. Church; Dale B. Clanton (423), A.J. Clark, succeeded by Nora Clark (269-364); A.J. Clark, succeeded by Humphrey Supply Company (533); Estate of Samuel Clark (290), Theodore W. Clark (578), Grace Clow (124), G.N. Clute, succeeded by P.S. Jensen (349); Louis Cohn, successor to J.J. Lyons (593); Mrs. F.T. Cole, succeeded by Otto Holz (559); L.A. Cole, successor to G.R. Duncan (422); Comer, succeeded by F.C. Smith (565); Commercial Soap Company (243½); Frank Compston and Charlotte Compston, successors to Tony S. Faretto and wife, Catherine Faretto (179½-206-259); Estate of B.A. Cooper, Sophia Cooper, Charles F. Cooper, Myrtle A. Cooper, Urban A. Cooper and Hazel B. Cooper, succeeded by Aguerrebere and Marinelarina (66); Charles F. Cooper, succeeded by A. Cerfoglio (183-213), C.M. Copelin, successor to Mrs. P.E. Fulwider and J.F. Williams (545); W.H. Corbiere, succeeded by H .S. Teasdale (556); J.W. Coulter, succeeded by W.O. Allen (456); L.E. Cox and wife, Nancy J. Cox and C.L. Cox (515); Mrs. M.N. Cox (176), R.J. Crawford (276), George T. Crosby (503), Alex Crotta, successor to Lucy M. Ulyatt (576); C.E. Crouch, succeeded by Mrs. Otto Holz (560); Mrs. Mamie Crowell, succeeded by Charles Faretto and A. Landa (67); B. Curano, successor to Mary De Remer (254); James Curnow, succeeded by Natale Denivi (528) and Mary Sorani and Plenio Sorani (529); Laura B. Curnow, successor to Mrs. William Curnow (531).

(D) Alice Davis, succeeded by W.H. Davis (561); W.H. Davis (566), Rick De Bernardi (55-151-196), Rick De Bernardi, successor to Lena Robertina (56); Decosse (25), Degiovanni Brothers, intervenors, succeeded by J. Geravanta (82); Degiovanni Brothers, intervenors, succeeded by James Callahan (78-188); Degman and Richardson,

succeeded by Carl Elges (64); Attilo Deini and Venanzio D. Andrea, successors to J.B. McCullough (345); Natale Denivi, successor to James Curnow and Antone Figone (528); G.S. Denton, succeeded by Peter Quillici (17); Domenico Depaoli (586); M.P. Depaoli, successor to John B. Sturla and Frank Monte (641); M.P. Depaoli, successor to E. Olinghouse (639-640-643-645); Mary De Remer, now Mary Brewington; Mary De Remer, succeeded by B. Curano (254), Mrs. L.V. Herman (255), A. Baroli (256), Angelina Gaspari (350), J.A. Scanavino (440), J.W. Jones (441), H.E. Snare (442), D.P. Jones (443), E.L. Hall (444), and C.J. Anderson (445); L. Devincenzi (413½); Mrs. Mary Dickey and Mary V. Dickey, succeeded by Charles W. Mapes (601); C.D. Dixon, succeeded by M. Pradere (340); Johnson Dixson (22); Andrew Drake, succeeded by Daisy Adams (435); Mrs. F.A. Drake, successor to R.N. Drake (308-408½); Mrs. E.A. Drolette, successor to S.M. Tallman (169); C.H. Duborg (277); J. Duncan, succeeded by Mrs. C.E. Boswell (564); G.R. Duncan, succeeded by L.A. Cole (422); F.E. Durham (94); J.H. Dwyer (424).

(E) Marion L. Eaton (237); W.T. Echols, succeeded by C.P. Ferrel (305-407½); J.W. Eckley, administrator, succeeded by Carl J. Lockwood (623); Eddystone Farm and Produce Company, succeeded by Mark L. Yori (302-303); Stephen Ede and Philip Ede, succeeded by Peter Thomsen (215-216-217); Albert W. Edwards; Electric Mining and Reduction Company, incorporated (12); Carl Elges (316); Carl Elges, successor to Degman and Richardson (64) and L.W. Berrum (173); Miss Estey (27); Alvira Evans (133); Elizabeth Evans, succeeded by C. Gadda and W.F. Gadda (283); Elizabeth Evans, succeeded by J.N. Evans Estate Company, incorporated, (130-280-383-616-618).

(F) C.J. Fairchild (620); Antonio Faretto and Louis S. Faretto (506-507); Charles A. Faretto, Katherine Faretto, M.D. Faretto, successors to Joe Faretto Estate, succeeded by Charles Faretto and A. Landa (67); Federal Trust Company, succeeded by Julius Pieh (253); Domengo Felipelli (79-189-720½); G. Felipelli, succeeded by Gerolemo Zolezzi, intervenor (86); Nick Felipelli (224-225); D. Ferrari and Caterina Ferrari (598), succeeded by Pasquale Istrice (599); Angelo Faretto, John Faretto and Joseph Faretto (75-219-220); Estate of D. Ferretto (662-676-677-678-679); John G. Ferretto and Peter W. Ferretto (663-684-685-686); T.S. Ferretto, succeeded by Frank Compston and Charlotte Compston (179½-206-259); C.P. Ferrel, successor to Carlo Rosasco and W.T. Echols (305-407½); G.L. Ferris and Mrs. L. Ferris, successors to Edwin Ferris (152-197-231-356); Mrs. G.R. Fettic, succeeded by A.H. Ramelli (294); Antonio Figone, succeeded by Natale Denivi (528) and Mary and Plenio Sorani (529); Mary S. Finley (29); Peter Finn and Co-owners, successors to Louis Avansino (467); Christopher J. Finn and Peter Finn, succeeded by Peckham and Brooks (474); E. Fiori (427); Flanagan Addition or J.N. Evans Estate Company, incorporated (130); Patrick L. Flanigan; H. Fleishacker and Scheeline Estate (588); Mrs. Alice Foley (59); C.D. Folsom (282); Ed Foreson (200-233); W.H. Frazer (319); W.H. Frazer, succeeded by J.T. Bisagno, Ferdinand Bisagno and T.J. Bisagno (322); Leo E. and Frances A. Frey, successors to Louise Frey (179-257–) Mrs. Harry Frey, succeeded by Aguerrebere and Marinelarina (66); Clyde Frohlich, Hilda Frohlich and Willie Frohlich (509-517); W.F. Fugate (421); J.M. Fulton, Theodora Fulton and C.L. Taylor and grantees (398-399); Mrs. P.E. Fulwider, succeeded by C.M. Copelin (545); Mrs. P.E. Fulwider (544).

(G) C. Gadda and W.F. Gadda, successors to Elizabeth Evans (283); Galena (38); Frank J. Gallery, intervenor, successor to C. G. Knox (116-117); C.W. Galloway (160); J.C. Games (246); Mrs. E.C. Galsgie, successor to Fannie T. Haynes (446); M.C. Galvin and J. Galvin, successors to E.A. Brainard (323); Garavanta Land and Livestock Company, incorporated, successor to John Garavanta (635-636); Garavanta and Pessi, succeeded by H. Bersani, intervenor (83); Luigi Garaventa, succeeded by Quilici and Panelli (625); David Gardella and Stefano Capurro, successors to D. Zolezzi (736); Felice Gardella (613); Joseph Gardella (644); L. Gardella, intervenor, succeeded by L.F. Johnson (50-97); Paul Garson, intervenor, successor to Chris Theusen (46); Angelina Gasparri, successor to Mary De Remer (350); C.J. Gault, succeeded by Otto Olsen (326); Dan Gault and James Gault (313-314); Eli Gauthier and P. Leauthier, successors to Minnie E. Ward (417); Domingo Gavica (19); C.A. Gelmstedt (199-232); Martin Geraghty, successor to Peter Murphy (622); Pearl A. Gerard, succeeded by Fritz Niebuhr (590); S. Geravanta (81); S. Geravanta, successor to Degiovanni Brothers, intervenors (82); Andrew and Julia Ghiggeri, succeeded by J.B. Pecetti, intervenor (73); Madalina Ghiggeri and Bart Ghigleri, succeeded by D. and P. Cerfoglio (70); Annie Ghigleri, Andrew Ghigleri and John Ghigleri, for Andrew Ghiggeri, succeeded by E.D. Maddalina (185); B. Ghiggeri, successor to A. Litch Estate (240); Andrew Ghigleri and Peter Ghigleri, successors to John F. Kleppe (600); Ernesto Giannattei, or successors to Walter Berry (470-471); J.W. Gilpin, succeeded by Mrs. Fred Jones (541); G. Ginocchio, successor to Mrs. Clara Streiff (429); G.B. Ginnochio, succeeded by Blanche Mae Belle Vanderwerker (382½); Nick Ginnocchio (80-190); Giovannia and Felipelli, succeeded by Gerolemo Zolezzi

(86); H.L. Gleason, successor to A.C. Armstrong (174); Glendale Irrigating Ditch Company, incorporated, (612); Betty Glenn, succeeded by Aguerrebere and Marinelarina (66); F.W. Glenn, succeeded by Dondero (62); John Gotalli, succeeded by Casinelli and Silvey (583); George Gould, succeeded by Humphrey Supply Company, incorporated, (533); and by G. Ceresola (535); Will E. Gould (500); E.B. Graves, succeeded by A. Van Derhoof (536); P.S. Greeley and Mrs. C. Mitchell (552); L.A. L. Green, successor to Vanetti and Capurro (661-673-674); John Gregorich, successor to John S. Sheehan (553); Della Grignon (40); George Grose successor to Antonio Azaveda (327-328); James Grose (329); Ralph M. Guthrie (461);

(H) E.L. Hall, successor to Mary De Remer (444); Hans Hanson, intervenor (49); Mrs. Mette Hanson, succeeded by Henry S. Hanson and Martha W. Landis (180); J.L. Hash (207½-265½); U.S. Hanson (681-682-683); J.E. Harris, succeeded by Robert Nelson (61); W.J. Harris (271½); Mrs. Ed. Harvey, successor to E.L. Bickford (540); E. Hawkins and Joe Ryans, successors to J.J. Barton (154); P.A. Hawkins (373); Archie E. Haydon, succeeded by I.M. Lewis (343); Mrs. E.A. Haydon, succeeded by Mrs. A. Trosi (346); Fannie T. Haynes, succeeded by Mrs. E.C. Galsgie (446); Mrs. L.V. Herman, successor to Mary De Remer (255); E.S. Heward, successor to R.W. Williams (389); Albert A. Hibbard; J.M. Higgins (411); Thomas Hill, succeeded by John P. Williams (628-629); Himmelberger, succeeded by W.H. Jones (157); Helena E. Hogan (102-142); Hogan and Muran (508); Holcomb Brothers, successors to Jeanette and James Burke (669-706) and Nick Sorgi (669-702-703-704-705-706); G.R. Holcomb Estate Company, incorporated, (74-144-191-218-670-707-708-719-720-728 to 732); George E. Holesworth, succeeded by

Charles W. Mapes (510-514); C.C. Hollenbeck (615); Hugh Holstrum (21-see 724b.c.); Otto Holz, successor to Mrs. F.T. Cole (559); Mrs. Otto Holz, successor to G.C. Strader and C.E. Crouch (560); Ben Howard or Estate of or successors to Mary J. Howard (716); Mary J. Howard, or successors or J.H. Christensen (717); H.G. Hubbard (165); H.G. Humphrey (457); H.G. Humphrey, successor to Margaret Schaffer Estate (408); H.G. Humphrey, successor to William H. Winfrey and Edwin E. Winfrey (409); Humphrey Supply Company, incorporated (296-611); Humphrey Supply Company, incorporated, successor to Mary J. Kinney (579-580); Humphrey Supply Company, incorporated, successor to George Gould (532-533); Frances Hunken, successor to H.C. Hunken (91); Hunter Creek Water Company, incorporated, succeeded by Truckee River Power Company, incorporated (725-726).

(I) George Imes, succeeded by Daisy Adams (435); Martin Inda and Romaldo Irrabarren, successors to George A. Percival (597); Indian Colony, by U.S. Indian Service, successor to Ione Gould Lewis (499); Indian Lands, Pyramid Lake Reservation, by United States (1-2); George W. Ingalls and Eliza Ingalls, succeeded by August Salet (396); Romaldo Irrabarren and Martin Inda (597); Pasquale Istrice, successor to D. Ferrari and Caterina Ferrari (599); Italian Beneficial Society, succeeded by B. Curano (254).

(J) B.A. Jacobi (434); Chris Jacobsen, successor to J.C. Murry and wife, Agnes Murry (595); M. Jepsen and M. Jacobsen, succeeded by James Nelson (318); Anna James (286); R.O. James (241½); R.T. Jenkins, successor to Luigi Avansino (238); Anna Jensen, successor to J.R. Tarner (547); A.L. Jensen, successor to L.M. Christensen

(76-78); J. Jensen (32); Martin Jensen, successor to Grant E. Rice (591); P.S. Jensen, successor to G.N. Clute (349); P.S. Jensen Estate (375); Robert Jensen, succeeded by Kathryn N. Ray (496); R.C. Jensen, succeeded by Louis M. Nelson, intervenor (118); R.C. Jensen, intervenor, successor to Reno Power, Light and Water Company, incorporated, and to J. Pincolini (132); M. Jepsen and M. Jacobsen, succeeded by James Nelson (318); James Jepson (538); James Jepson, succeeded by J.M. Wyckoff (537); John Johnson (287); John Johnson successor to John W. McCollum (304); Leonidas Frederick Johnson, successor to Stefano Capurro and to L. Gardella, intervenor (50-97); Mahalia E. Johnson (431-432-433); Charles Jones and Jane Jones (605-606-607); D.P. Jones, successor to Mary De Remer (443); Mrs. Fred Jones, successor to J.W. Gilpin (542); John Jones (30); J.W. Jones, successor to Mary De Remer (441); W.H. Jones, successor to Himmelberger (157).

(K) Sarah Kahn, succeeded by Charles W. Mapes (601); J.P. Kane, succeeded by F.D. Black (437); Patrick J. Kelley, succeeded by Mark L. Yori (302-303); William F. Kestell (460); A.E. Kibble, lessee Mrs. L. Simas, intervenor (110); Albert Kietzke (414-415-416); Mary H. Kinney, succeeded by Humphrey Supply Company, incorporated (579-580); John F. Kleppe (617); John F. Kleppe, succeeded by Andrew and Peter Ghigleri (600); C.G. Knox, succeeded by Frank J. Gallery (116-117); F.M. Konkel and B.L. Konkel, successors to C.A. Swart (558); J.H. Kormier, successor to N.J. Ploder (554); A.R. Kosswig, succeeded by Mrs. John Schwandt (567); N.B. Kyker, successor to Mrs. S.M. Stephens (550); E.C. Kylander, successor to Mrs. O.J. Boies (539);

(L) A.T. Laffranchini, succeeded by Toni Saralagui or Antonio Savellegin (239); G. Laiolo (168); P. Laiolo, successor to George W. Bidleman (472); M.A. Laking (548); W.E. Lampson and F.C. Savage, succeeded by Dr. F.H. Phillips (247); W.E. Lampson and F.C. Savage, succeeded by W.E. Lampson (248); Mrs. E.J. Lanagan (419); A. Landa and Charles Faretto, successors to Joe Faretto Estate (67); Martha W. Landis and Henry S. Hanson, successors to Mrs. Mette Hanson (180-723½), Mrs. A.H. Lane (274); L.M. Largomarsino, succeeded by Carl J. Lockwood (621-623); Thomas Largomarsino, executor, succeeded by Carl J. Lockwood (621-623); A.L. Laughton, intervenor succeeded by J. Atcheson and L.R. McKenzie (48); Charles Laughton, successor to George and Ella Laughton (394); Frank A. Laughton, intervenor, (104); Nancy J. Laughton, succeeded by Abbie W. Quinn, intervenor (103); T.B. Laurie, succeeded by H.G. Hubbard (165); Robert Lavoie (164); G. Lavagnino and C. Lavagnino (325); Peter Lawless, succeeded by Constantino and Bruno Petri (624); Peter Leauthier and Eli Gauthier, successors to Minnie E. Ward (417); Frank M. Lee, or successors (376); Leete Syndicate (278); Ione Gould Lewis (498); Ione Gould Lewis, succeeded by the United States (499); I.M. Lewis (342-344); I.M. Lewis, successor to Archie E. Haydon (343); A. Litch Estate, succeeded by B. Ghiggeri (240); Carl J. Lockwood, successor to L.M. Largomarsino and to R. Noce Estate (621-623); Guilio Lombardi (71); A.L. Longfield and Trannie Longfield, succeeded by Trannie Bridgeman (223); Mrs. Lonkey, succeeded by Mrs. Sorenson (41); Guiseppe Luchetti and Gia Batta Luchetti (571); W.P. Lyell, succeeded by D.W. Ridenour (226-227); John J. Lyons, succeeded by Ben Barbash and Lou Cohn (593); James S. Lyons (668-700 to 701); James S. Lyons, successor to Nick Sorgi (646);

(M) Charles E. Mack (372); Charles E. Mack and W.L. Semenza (—); E.D. Maddalena, successor to Andrew Ghiggeri (185); G.D. Maddalena, intervenor, successor to A.F. and Margaret A. Swall (72-186); Charles Maggiolo, succeeded by Matteo Ramelli (388); C. Maggiolo, successor to Ben Raggio (300); Mat Magzan, or Matt Mazzaro (162); George W. Mapes, succeeded by Charles W. Mapes (602); George W. Mapes, succeeded by Martino Marchi (234); George W. Mapes, succeeded by Charles T. Sorgi (362); George W. Mapes, succeeded by H.D. Sanborn (235); George W. Mapes, succeeded by N.L. Neilson (363); Charles W. Mapes, successor to George W. Mapes (602); Charles W. Mapes, successor to Alt Estate (601); Charles W. Mapes, Successor to George Holesworth (510-514); Emma J. Marble, formerly Emma J. Williams, now Emma J. or Mrs. George R. Bidleman (485-486-487-488-489); Giovanni Marchi (58); Martino Marchi, successor to George W. Mapes (234); Marinelarina and Aguerrebere, successors to B.A. Cooper Estate (66); Frank Marks (13-30); S. Martinengo, succeeded by P.G. Avansino (413); Frank P. Martin, succeeded by B. Pacini (339); H.C. Masters (175); (Mason's Cemetery – see Trustees); John M. Matley and wife, Annie M. Matley, successors to Martha Steinberger (519-522); John M. Matley and wife, Annie M. Matley, successors to Minnie E. Ward (518-523); Narciso Matteoni, of successors to Walter Berry (470-471); H. Maxson (402) and H.B. Maxson (401); Agatha Maxwell and William Maxwell (516); Matt Mazzaro or Matt Magzan (162); Patrick McCarran (626-627); Henry S. McLeod and wife, Lillian M. McLeod, successors to Agnes Nield (155); Sarah McClure (358-359); John McCollum, succeeded by A.H. Ramelli (289); John W. McCollum, succeeded by John Johnson (304); J.B. McCullough, succeeded by Attilo Deimi and Venanzio D. Andrea (345);

E. McIntosh, successor to A.F. Neidt (122); Stewart McKay, succeeded by C.J. Christensen (610); L.R. McKenzie and J. Atcheson, intervenors, successors to George Christensen and A.L. Laughton (48); Mrs. N.E. McMurdo (321); Albert McPhail; Marino Melillo, successor to J.W. Titus (170); Maude Menardi, succeeded by Eugenio Arbico (501); W.H. Menke (438); Webster Millen (426); C. Mirando, succeeded by Felix Turillas and Amado Yriarte (288); Mrs. C. Mitchell, succeeded by P.S. Greeley (552); Mrs. Phillipine Mitchell (31); Moana Mineral Springs Company, incorporated, (261); William H. Moffat (447); Joe Mongolo (250); Louis Mongolo (584); Frank Monte, succeeded by M.P. Depaoli (641); John Monte (634); Theodore A. Morrill and James Morrill; Chris Mortensen, M. Mortensen, Jr., and Sophus Mortensen, intervenors (47); A. Mosconi, succeeded by Frank Simoni and G. Simoni, intervenors (106-107); C.T. Mullins, succeeded by Steve Borsi and Antone Borsi (53); Peter Murphy, succeeded by Martin Geraghty (622); James Murray and William Murray (358-359); Sam Murray (359-360); Sam Murray, succeeded by H.D. Sanborn (235); John C. Murry and wife, Agnes Murry, succeeded by Chris Jacobsen (595).

(N) T.J. Nash, succeeded by F.C. Smith (565); W.C. Neasham, succeeded by George H. Calligan (568); A.F. Neidt, succeeded by E. McIntosh (122); A.A. Neilson (664-687-688); A.C. Neilson (666-692-693-694-695); H.C. Neilson (667-696 to 697); N.L. Neilson, successor to George W. Mapes (363); Nels P. Neilson; N.T. Neilson succeeded by R.L. Pryor (563); James Nelson, successor to M. Jacobsen and M. Jepsen (317-318); Louis M. Nelson, intervenor, successor to R. C. Jensen (118); Robert Nelson, successor to J.E. Harris and to the Overland Realty

Company (60-61); Nevada Gunite Manufacturing and Construction Company, incorporated, succeeded by J.C. Games (246); [(State of Nevada, not a party, rights estimated, – Hospital for Mental Diseases (11-410); University Stock Farm (264); University of Nevada (281); University Experiment Station (384); State Agricultural Society (385)]; Nevada Steamboat Springs Company, incorporated (698); Nevada Stock Farm, incorporated, successor to Mrs. Alice Thoma (452); Nevada United Mines Company, incorporation, succeeded by Joe Carmella (324); Francis G. Newlands, James Newlands, Jr., F.G. Newlands Company, incorporated (201); The Newlands Company, incorporated (236-257); L.C. Nicholas) (39); Fritz Niebuhr, successor to Pearl A. Gerard (590); A. Nield (156); Agnes Nield, succeeded by Henry S. McLeod and wife, Lillian M. McLeod (155); George S. Nixon; Nixon Estate Company, incorporated (—); R. Noce Estate, succeeded by Carl J. Lockwood (621-623); North Truckee Ditch Company, incorporated (525);

(O) Amelia O'Brien (241); J.F. O'Brien (244); J.F. O'Brien, succeeded by D.W. Reilly (245); J.F. O'Brien, succeeded by D.C. Wheeler, Inc. (246); [Odd Fellows Cemetery – see Trustees (120);] E. Olinghouse, succeeded by M.P. Depaoli, W.J. Ceresola, J.A. Ceresola and Estate of Louis M. Ceresola (639-640-643-645); J.D. Oliver (57); Antonio Olivia (293); Otto Olsen, successor to C.J. Gault (326); S. Oppio, successor to Henry Stevens (609); Joe M. Orchio (167); Orr Ditch and Water Company, incorporated, successor to Orr Water Ditch Company (267-320-341); Dennis O'Sullivan, successor to J.D. O'Sullivan (311); J.R. O'Sullivan, successor to J.D. O'Sullivan (312); Overland Realty Company, succeeded by Robert Nelson (61);

(P) B. Pacini, successor to Frank P. Martin (339); Mrs. Page, succeeded by Mrs. Sorenson (41); G. Panelli and R. Quilici, successors to L. Garavanta (625); S. Parlanti, successor to J.E. Petersen (573); R.W. Parry, succeeded by Ernesto Canepa (51); F.G. Patrick (200-242); Angelina Pecetti (691); F.A. Pecetti, successor to John Pecetti (77); John B. Pecetti, intervenor, successor to Andrew Ghiggeri and wife, Julia Ghiggeri (73); Alfred Peckham, James Peckham and George Peckham (464); George E. Peckham (463); Alfred Peckham and Charles W. Brooks, successors to Christopher J. Finn and Peter Finn (474-475). – Peoples Drain Ditch Company incorporated; George A. Percival, succeeded by Martin Inda and Amaldo Irrabarren (597); Pessi and Garavanta, succeeded by H. Bersani, intervenor (83); Anna M. Petersen (592); J.E. Petersen, succeeded by S. Parlanti (573); R.S. Petersen and wife (310); Constantino Petri and Bruno Petri, successors to Peter Lawless (624); Domingo Pezzi (69); Dr. F.H. Phillips, successor to W.E. Lampson and F.E. Savage (247); George S. Phoenix, succeeded by Mrs. Marie Yori (249); Santino Piazzo, intervenor (138); Lorenzo Picetti, Luigi Picetti and Pietro Picetti (68); Julius Pieh, successor to Federal Trust Company (253); Pearson and Cafferata (244½); William Pierson, succeeded by E.R. Albee and Leora Albee (638); A. Pincolini, intervenor (88); Joseph Pincolini, intervenor (137); Joseph Pincolini, succeed by R.C. Jensen, intervenor, (131-132); Victorio Piretto (149); N.J. Ploder, succeeded by J.H. Kormier (554); E. Plumb Estate (153); R. Plumb Estate (198); Irene Poole and James Poole, succeeded by Mrs. Ed. Calhoun (551); E.J. Posvar, succeeded by T.H. Blundell (637); M. Pradere, successor to C.D. Dixon and M. Yribarren (340); H.J. Pratt, intervenor (128-129); R.M. Price, trustee (491); Vernon Price (521); Mrs. E.A. Proctor (549); S.J. Prose,

succeeded by Charles E. Catoir and Joe P. Strathman (397); John H. Prosole, intervenor (85); Louis Prosole, intervenor (87); R.L. Pryor, successor to N.T. Neilson (563); Pyramid Lake Reservation (see United States).

(Q) G.B. Questa, succeeded by Mark L. Yori (302-303-404); Guilio Quilici, of successors to Walter Berry (470-471); R. Quilici and G. Panelli, successors to L. Garavanta (625); Peter Quillici, intervenor, successor to G.S. Denton and G. Ricci (17); Abbie W. Quinn, intervenor, successor to Nancy J. Laughton (103); E.F. Questa (74).

(R) Antonio Raffetto (140-292-614); B. Raggio, succeeded by B. Rosasco (299-386); B. Raggio, succeeded by C. Maggiolo (300); B. Raggio, succeeded by Mark L. Yori (387); A.H. Ramelli, successor to J. McCollum (289); A.H. Ramelli, successor to Mary G. Bellamy and Mrs. G.R. Fettic (294); Alfonso Ramelli, successor to D. Rosasco and P. Rosasco (295); Caesar A. Ramelli (709-710-711-712-713-714); Matteo Ramelli, successor to Charles Maggiolo (388); Kathryn N. Ray, successor to Robert Jensen (496); Charles L. Raymond and Elizabeth E. Raymond, succeeded by C.L. Richards (378); Florence M. Read (430); Florence M. Read and Mrs. R.J. Read, succeeded by Mrs. Adalina Trosi (346-347-348); John Read; Antone Rebori (374); H. Reid, succeeded by Reno Golf Club (262); D.W. Reilly, successor to J.F. O'Brien (245); Mrs. M. Reilly (243); John Reinmiller (241); Reno Brewing Company, incorporated (400); City of Reno (371); Reno Golf Club, successor to L.W. Berrum (178-262); Reno Power, Light and Water Company, incorporated, succeeded by The Truckee River Power Company, incorporated, (95-96-99-100); Reno Power, Light and Water Company, incorporated, succeeded by R.C. Jensen, intervenor (131-132); Reno Press Brick Company, incorporated (272); Henrietta Revert, succeeded by Walts

Brothers (93-724); J.P. Reynolds, successor to T.H. Blundell (630); G. Ricci, succeeded by Peter Quillici (17); A.L. Rice; Grant E. Rice, succeeded by Martin Jensen (591); Mary E. Rice, succeeded by W.G. Smith (265-462); Warren G. Rice, succeeded by A. Capurro (594); C.L. Richards, successor to T. Parry Tyson (377); C.L. Richards, successor to Charles L. Raymond and Elizabeth E. Raymond (378); Richardson and Degman, succeeded by Carl Elges (64); D.W. Ridenour, successor to W.P. Lyell (226-227); Henry Riter (291); Riverside Mill Company (10); F. Roberti, succeeded by Antone Borsi and Steve Borsi (53); Mrs. Lena Robertina, succeeded by Rick De Bernardi (56); Mrs. N.L. Robinson, succeeded by Mrs. N.L. Theusen (543); D. Rogero, successor to Schaffer Estate (390); B. Rosasco, successor to B. Raggio (141-299-386); Carlo Rosasco, succeeded by C.P. Ferrel (305-407½); Carlo Rosasco, successor to Schaffer Estate (407); D. Rosasco and P. Rosasco, succeeded by Alfonso Ramelli (295); G. Rosasco, intervenor, successor to I.J. Walker (126); Joseph Rosasco, intervenor (139); Fred Ross (26); O.C. Ross, succeeded by Andy Bonamici, G. Sorani and S. Sorani (581); F.M. Rowland (297); F.M. Rowland, succeeded by John Aratzabel (298); Joe Ryans and E. Hawkins, successors to J.J. Barton (154).

(S) John Sable (32); August Salet, successor to G.W. Ingalls and wife, Eliza Ingalls (396); John Salisbury, succeeded by Chris Theusen (90); John Salisbury (18); Signelio Salvatore (109-193); H.D. Sanborn, successor to George W. Mapes and J.J. Murray (96); Toni Saralagui, or Antonio Savellegin (239); P. Saturno, succeeded by Nora Clark (269-364); Viola M. Sauer and Ella Bailey (655-656-657-658-659-675); A.F. Scanarino (273); J.A. Scanavino (440); Margaret Schaffer Estate, succeeded by D. Rogero

(390); A.E. Springer (395); Carlo Rosasco (407), and H.G. Humphrey (408); Scheeline Banking and Trust Company, succeeded by John P. Williams (628-629); Scheeline Estate and H. Fleishacker (588); Agostino Schiappecasse (148-229); Lizzie Schmitt (270½); J.H. Schroeder, successor to Mrs. Bessie Bovee (492); William H. Schroeder; Mrs. John Schwandt, successor to John Schwandt and A.R. Kosswig (567); F. Sciaroni (306); J.M. Scott, successor to Thomas Scott (309-408¾); Scott Ranch Ditch Company (490); Cora May Sellman (715); Antonio Semenza (585); W.L. Semenza and C.E. Mack; J.J. Shannon, intervenor (121); S. Sharp (35); John H. Sheehan, succeeded by John Gregorich (553); Mrs. Mary Sherman (127); Lucy E. Short and William C. Short, intervenors (480-481-482-483-484); Salvatore Signelio (109-193); Dora Silvey (589); G.A. Silvey and P. Casinelli, successors to John Gotalli (583); Mrs. L. Simas, intervenor (110); Frank Simoni and J. Simoni, intervenors, successors to A. Mosconi (106-107); Ella M. Smith (see now Ella M. Bailey); F.C. Smith, successor to T.J. Nash and Comer (565); L.D. Smith (652-653-654); Preston B. Smith (275); W.G. Smith, successor to Mary E. Rice (265-462); H.E. Snare, successor to Mary De Remer (442); W.M. Snare, intervenor (113-114); G. Sorani and S. Sorani, of successors to O.C. Ross (581); Mary Sorani and Plenio Sorani (529); Mrs. Sorenson, successor to Mrs. Lonkey and Mrs. Page (41); Charles T. Sorgi, successor to George W. Mapes (361); Nick Sorgi, succeeded by J.S. Lyons (646); Nick Sorgi, succeeded by Holcomb Brothers (669-702 to 705); South Side Drain Ditch Company, incorporated; South Side Irrigating Canal Company, incorporated (228); Southern Pacific Company, incorporated, lessee of Central Pacific Railway Company, incorporated (526-527); Spanish Spring Valley Ditch Company, incorporated (341); A.E. Springer, successor to Schaffer Estate (395); State of

Nevada (see Nevada, state of); Steamboat Canal and Irrigation Company, incorporated, successor to Steamboat Canal Company (16); Steele Corporation, (incorporated) (524-596); James Steele; Martha Steinberger, succeeded by Annie M. Matley and John B. Matley (519-522); C.L. Steiner, successor to R.N. Brannin (557); Henry Stephens, succeeded by S. Oppio (609); Mrs. S.M. Stephens, succeeded by N.B. Kyker (550); Carl Stoddard (449); Charles H. Stoddard (381-450); Cora N. Stoddard; J.E. Stout, successor to W.H. Davis (566); Joe P. Strathman and Charles E. Catoir, successors to S.J. Prose (397); Mrs. Clara Streiff, succeeded by G. Ginocchio (429); G.C. Stroder, succeeded by Mrs. Otto Holz (560); John B. Sturla, succeeded by M.P. Depaoli (641); Matie Summerfield, later Matie D. Carter, succeeded by D.C. Wheeler, Inc. (incorporated) (182-207); B. Sundin (333-334); A.F. Swall and Margaret A. Swall, succeeded by G.D. Maddalena, intervenor, (72-186); Emma J. Swan, successor to George Imes and Andrew Drake (436); Augusta Swanson (307-407¾); C.A. Swart, succeeded by F.M. Konkel and B.M. Konkel (558).

(T) Frances M. Taber, formerly Frances M. Whitburn (123-364½); Angeline Tachino, Guy Tachino, John Tachino, Joseph Tachino, Mary Tachino and Rosie Tachino (665-691-692); S.F. Tallman, succeeded by Mrs. E.A. Drolette (169); J.R. Tarner, succeeded by Anna Jensen (547); Sam Tarner, successor to Anna Taylor (546); C.L. Taylor and successors (398-399); Anna Taylor, succeeded by Sam Tarner (546); H.S. Teasdale, successor to W.H. Corbiere (556); Tessier (42); Chris Theusen, succeeded by Paul Garson, intervenor (46); Chris Theusen, successor to John Salisbury (90); Mrs. N.L. Theusen, successor to Mrs. N.L. Robinson (543); Mrs. Alice Thoma,

succeeded by Nevada Stock Farm, incorporated (452) and Truckee Meadows Slaughtering Company, incorporated (458); Peter Thomsen, successor to Stephen Ede and Phillip Ede (215-216-217); Reuben C. Thompson and Mabel E. Thompson (379); J.W. Titus, succeeded by Marino Melillo (170); Mrs. Adalina Trosi (337-338-346-347-348); Angelo Trosi, succeeded by J.E. Trosi (733 734-735); Truckee Meadow Slaughtering Company, incorporated, successor to Mrs. Alice Thoma (458); The Truckee River General Electric Company, incorporated, succeeded by Truckee River Power Company, incorporated, (5-6-7-8-9-96-97-98-99-100-359, 725, 726); Trustees, Reno Lodge No. 14, Independent Order of Odd Fellows, intervenors (120); Trustees Reno Lodge No. 13, Free and Accepted Masons, intervenors (120); Felix Turrillas and Amailo Yriarte, successors to James Burke and Peter Burke (288); R.C. Turritin, trustee (see Margaret Schaffer Estate); A. Turtarolo (23); T. Parry Tyson, succeeded by C.L. Richards (377).

(U) Lucy M. Ulyatt, succeeded by Alex Crotta (576-577); United States [Newlands Project, formerly Truckee-Carson Project; Derby Canal and Lahanton Reservoir (3), Lake Tahoe (4), Pyramid Lake Indian Reservation (1-2); Reno Indian Colony (499)]; University of Nevada (281-384); University Stock Farm (264); Unknown Owners (28-33-43); Mary F. Upson (301).

(V) Blanche MaeBelle Vanderwerker (382½); Blanche MaeBelle Vanderwerker, succeeded by Julius Pieh (253); A. Van Derhoof, successor to Mrs. William Calligan and E.B. Graves (536); J. Vanetti, succeeded by L.A.L. Green (661-673-674); Margaret Van Meter (331-332); Venanzio D. Andrea and A. Deini, successors to J.B. McCullough

(345); Verdi Lumber Company, incorporated, (7-20); Verdi Municipal Use (45); Verdi School (44).

(W) Wadsworth Light and Water Company, incorporated, (13-14-15-635); I.J. Walker, intervenor (125); I.J. Walker, succeeded by G. Rosasco, intervenor (126); Morgan Wallace (555); Frederick Walts, Guy W. Walts and Herbert Walts, as Walts Brothers (251-453-454-455), successors to Henrietta Revert (93-724a-b-c-d-e); G.W. Walts (203); William Walts (252); Mrs. Minnie B. Ward, succeeded by Eli Gauthier and P. Leauthier (417); and John B. Matley and Annie M. Matley (518-523); George D. Washburn and Mary Washburn, successors to S.F. Washburn (632); Henry Washburn (633); Washoe County [Hospital (497), Verdi School (44)]; Washoe Lake Reservoir and Galena Creek Ditch Company, incorporated (660 to 672); Washoe Power and Development Company, incorporated, succeeded by Truckee River Power Company, incorporated (8-96-97); Robert Watson (423); Wells Estate Company, incorporated (428); Otto Werner, successor to Katherine Werner (365); C.W. Westover (158); D.C. Wheeler, Inc., (65-181-182-195-207 to 208½-721-722-723); successors to Matie D. Carter (182-195-207); successors to Nevada Gunite Manufacturing and Construction Company, incorporated (246); succeeded by University Stock Farm (264); Mrs. N.J. Wheeler (715); Frances M. Taber, formerly Frances M. Whitburn (123-364½); Samuel Wilbur (425); Sam M. Wiley (24); Emma J. Williams, later Emma J. Marble (485-486-487-488-489); J.F. Williams, succeeded by C.M. Copelin and Mrs. P.E. Fulwider (545); John P. Williams, successor to Thomas Hill (628-629); R.W. Williams, succeeded by E.S. Heward (389); William H. Winfrey and Edwin E. Winfrey, succeeded by H.G. Humphrey (439) and Pietro Casinelli

(403); Christ T. Wogan (737-738); J.L. Wollam, intervenor (115); J.L. Wollam (268) and succeeded by F.V. Avilla, intervenor (119); Elizabeth J. Wright, John W. Wright, Sarah M. Wright and Walliam G. Wright (221-222); H. Reid, succeeded by Reno Golf Club (262); J.M. Wyckoff, successor to James Jepsen (537); Wilkinson Brothers and Ennor, successors to T.S. Ferretto and to others (179½-206-259).

(Y) Mrs. Marie Yori (603-604), successor to George S. Phoenix (249); Mark L. Yori (502), successor to Eddystone Farm and Produce Company and G.B. Questa (302-303-404), successor to B. Raggio (387); M. Yribarren, succeeded by M. Pradere (340).

(Z) D. Zolezzi, succeeded by Stefano Capurro and David Gardella (736); Gerolemo Zolezzi, intervenor, successor to G. Fellipelli (86).

(AA) Ackerman, Glenn W. & Ruth (247); Acrea, D.L. (431, 432); Adams, Wayne B. (250); Agnes, John (458); Aguerrebere, Martin (138); Ah You Est., A.R. Schindler, Trustee for Wayne & Roland Asher (250); Aldabe, Bert & wife Marie (119); Alexander, Henry (247); Allen, Ira T. & wife (179); Allison, Geo. (278, 287, 304); Altic, Edith B. & A.L. (366); American Loan Society (454); Anderson, Chas. J. (367); Anderson, Irene (574, 575); Anderson, Pete (208); Anderson, Robb & wife Ida (232); Anderson, Tom & Mildred (452); Anderson, Wm. H. & wife Zelia A. (250); Andrews, W.L. (208); Annett, Sheldon & Audrey (249); Arden, John (59); Arigoni, A.M. & wife Natalie (247); Armstrong, Alice Powers (64, 173); Atcheson, Katherine C. (48); Atkinson, Frances B. (177); Atkinson, Paul E. & wife Marie (119); Aust,

W.T. (244); Austin, W.C. (.....); Avansino, John (184, 214); Avansino, Louis (143); Avansino, William and Silvo (368); Avanzino, Jack (597); Avanzino, John L. (368); Avanzino, Thomas (457); Ayres, Irvin L. (55); Azcarata, Frank (622); Aznarez, Eusebio (247).

(BB) Baggenstos, Manual (498); Baker, Ella A. (574), 575); Baker, Harold (574, 575); Baker, Herman (574, 575); Baker, Isabelle (574, 575); Baker, Nellie (574, 575); Baker, Mildred Hobe & Charles J. (717); balata, Louis A. & wife Hazel (459); Bamberger, Geo. E. (503, 504, 505); Baragelata, Joe (592); Bares, Raymon F. & wife Pauline (249); Barlow, Wm. H. & wife Lennie (452); Barry, Mrs. Clara (207); Bartholomew, Frank & Antonia (274); Bazell, Novice & Nable (502); Beasley, Bud L. & wife Nellie E. (55); Beecher, Helyn (177); Beecher, Wm. T. & wife Janett (247); Beedle, Hadley (250); Beemer, Louise B. (454); Beemer, William (55); Beko, Tom & Willie (454); Belford, John S. (191); Bell, Enock J. & wife Carrie (209, 210); Belli, Mario (50, 50a, 97, 97a); Belmont, Adeline (454); Bennett, Delbert & wife Marjorie R. (454); Benson. Wm. B. & wife Anna (424, 425); Berg, Carl & wife Erma (177); Bergeret, L.A. (235); Bergstrom, R.H. (467, 468); Bernhard, Fred & wife Hazel (247); Berry, Paul & Gladys (456); Berrum, Karoline (261); Bertoluochi, C.A. (454); Bevilacqua, Emilio (209, 210); Biltz, Norman (64, 178½, 204, 206, 247, 249, 250); Birdsall, Fred R. & Celia T. (454); Bishop, Loen F. & wife Ruby A. (153); Bitner, E. Clyde & wife Angeline (249); Black, Alton & wife Louise (208); Black, Edna May (177); Blackmar, Francesca (628, 629); Block, P.G. (431); Blumberg, Kitty (208½); Bohal, Les (205); Bonham, Greely W. (431, 432); Bonnell, Eulah (177, 512); Bosq, August (136, 136a); Bottomly, Ralph (177); Bowen, Grant L. & wife True Gifford (247); Boyd, John B. (130);

Boylan, Anna C. (358-359); Boswell, Alice (409); Boyne, Albert B. (454); Brennan, Austin J. & Margaret (123); Bresson, Ernest E. & Raymond Keller (428); Britnell, Lawrence (498); Browder, M.D. (205); Brown, Carl & Nellie (498); Brown, E.L. (431, 432); Brown, Elmer L. & wife Marine (431, 432); Brown, F.W. & wife Anna (209); Brown, Mrs. H.H. (457); Brown, Hazel & Howard (179, 251, 252, 205); Brown, Irvin C. & wife Jean Filler (133); Brown, Julia Angeline (141, 299); Brownell, Earl & Myrtle (498); Brundidge, Alva A. (454); Brunetti, Frank & Nancy (744); Brussard, Wm. & wife Evelyn (208); Bryson, Lena (249); Bunge, L.W. & wife Helen (136, 136a); Burchett, Chloe (.....); Burge, Lee and wife Mildred (206); Burke, N.E. & wife Virginia M. (191); Buchanan, Freeman M. & wife Lida M. (133); Burns, Robt. James & wife Kathryn Pine (247); Burris, Charles W. & wife (699, 699a); Buscaglia, D. (181, 208); Busey, Douglas A. & wife (243); Bushing, Clarence H. (534); Butler, Fred & Violet (452); Butner, W.R. & S. (208½); Bates, Geo. & Earl, Geo. Wilkinson (412); Browne, J.J. & Nevada L. (431); Bruce, Martha R. (431); Bruce, M.R. & Mary I. Ryan (431).

(CC) Cafferata, August J. (621, 623); Cafferata, F.J. (529); Cafferata, Harold & wife Janet R. (243); Cafferata, M.E. (408); Caffrey, Willis & wife Dorothy (72b, 73, 76); Cairns, J.H. (133); Callahan, Anne Elizabeth (647, 647½); Cameron, R.H. & Lee Minor (177); Campbell, Edwin & Estella (407); Campbell, James L. (244); Campbell, Willard V.B. (65, 181, 208); Canepa, Fred (54, 101); Canepa, G. (170); Canepa, Louis (51, 94, 94a); Canepa, William (94, 94a); Cannon, Aquilla & wife Louise (209, 210); Cantlon, Vernon (634); Cantrell, Robert A. (256); Capitani, Joe & wife Josephine (153); Caples, Hazel W. (454); Capurro, B. & Ernest (52, 52½, 146, 727, 727½); Capurro, Joe & Pete

(405, 406); Capurro, John (454); Capurro, Louis J. & William J. (466, 472); Capurro, Louisa (459); Capurro, Rosemary & Victor, Dave Gardella, (408¾, 136, 136a, 398, 407½, 407¾, 408½); Capurro, Victor (342, 137, 139, 136, 136a); Caramella, Katherine (457, 408); Caramella, S. (459, 600); Carano, S.J. (177); Cardinal, Ralph F. (454); Cardinellia, Geo. & wife Gertrude (431); Carlton, Ralph (438); Carpenter, Adrie (443); Carver, Edna J. (431); Carver, James & wife Lillian (454); Casazza, A. (431); Casazza, Joe C., Jr., Ernest, Roy & Donald (717); Cassinelli, P., Jr. (583); Cauble, Angus & Janet (452); Ceresola, W.J. & J.A. (639, 640, 642); Chafee, A.M. (209); Champion, W.J. & wife Laura Belle (208); Chango, Maurice L. & wife Ruby (247); Chase, Russell (.....); Chism, E.W. (369); John Edward & wife Miriam (369); Christensen, Arthur B. & wife Pearle M. (209); Christensen, Mrs. Daisy (529); Christensen, Laurida (494, 511, 595); Christensen, Pete (358, 359); Clark, Birdie May (209); Clark, Cecil E. & wife Martha K. (454); Clark, F.N. (454); Clark, Jack S. & Marguerite (515); Clarke, Moss M. (368); Claus, Frank & Betty (429); Cleary, John J. & wife Joyce A. (454); Clink, M. (165); Clough-Fulton Co. (400); Cobb. Will (177); Collard, Geo. A. (454); Collier, Ann (63, 173); Compton, Byron C. & wife Sylvia F. (454); Conelly, Leslie J. & wife Carmelita (368); Conley, Lester C. (153); Connoly, Coleman & wife Johanna (249); Consolidated Warehouse Co. (407¾, 408, 307); Cook, Gordon Ellis & Marguerite (498); Cooper, C.F. & N.M. (208½); Corecco, Alma & Math Schmith (434); Corle, Fred & wife Nellie (165); Costa, Manuel E. (118); Couch, B.L. & wife Ellen O. (249); Cozzalio, Frank G. & wife Lydia (215); Crampton, Phillip H. (106, 107); Crawford, E.M. & wife Thelma (431); Cremer Investment Co. (395); Crews, Charles (452); Crowell, Mary (67); Cullen, Ray W. (356); Cuni, Ferdinand (452); Curry,

Gladys A. (454); Curti, Geo. & Julia (319); Curti, Katherine (167).

(DD) Daly, Anna E. (716); Damonte, Bennie (701, 702, 703, 704, 705, 706, 707, 715a); Damonte, Louis (701, 702, 703, 704, 707, 715a, 87); D'Andrea, Venanzio (339); Darby, Mary E. (431); Darrah, Lee & Carrol (196); Davis, Mary W. (182, 213); Davis, Raymond & wife Lois Evans (133); Davis, Russell B. (409); Dawson, Edward B. & wife Lois A. (182); Dean, Graham M. & wife Ruth (179); Del Cima, Amelia (209); DelCurto, A.W. (717, 718, 187); DeLucchi, Marvel (209, 210); DeLucchi, John P. (498); DeLucchi, Leo (.....); Depaoli, A. (491); Depaoli, Angelina (491); Depaoli, V. (123); Depeder, Jos. L. & wife (300, 305); Depoali, Richard & Furie (586); Dianda, E. (407); Dixon, John & Charlotte (498); Dondero, Chas. (62); Donovan, John (191); Doolittle, Theresa (311); Dorsay, P.N. & wife Elva (424); Downing, Uberto S. & wife Hazel E. (455); Drake Mrs. F.A. (408½); Drake, Floy N. (126); Drake, Robert (178½, 257); Dresser, Daniel (.....); Dron, Geo. W. & wife Louise (249); Dron, Louise N. (244); Duberstein, Isadore & wife Clara (206); Duchene, Mrs. P.F. (356); Duelks, Marie L. (454); Duferrena, Grace (244); Dunn, Allen Y. & wife Alice Day Cook (356); Dwyer, Teresa Marketti (424); Douglas, Mantee (454).

(EE) Eaton, Margaret J. (250); Eccles, Forrest (83, 84, 107); Edwards, William G. (107); Edmonson, Hattie B. (177)); Eggy, Otto & Lena (452); Elsen, Theodore & wife Lillian Y. (363); Elges, Louise (64, 316); Ellis, Bessie J. (605, 606, 606a, 607, 607a); Endsley, L.C. & wife Mary (431); Escalle, P. (428, 429); Esden, H.W. (635); Evans, Karl & Isabelle (502); Evans, Leslie (130, 133); Evans, J.N. Inc. (130); Eveland, A. John (64, 173); Everett, T.R. (494).

(FF) F. & A.M. Lodge No. 13 (122); Fairchild M.A. & Edna M. (250); Faretto, Leslie (452); Faretto, Raymond (452); Faretto, Tony (452, 457); Farretto, John C., Antone, Michael, Rose, Charles A. (67); Fairbanks, Boyd & wife Emily (153); Fairbanks, Lee (356, 153); Feretto, E. (509, 517); Ferrari, Eugene M. & wife Lee (244); Ferraris, Joseph & wife Diamond (390); Fuerstein, Wm. (244, 280, 130); Field, John S. (182); Fife, Betty, William, James & Joseph (266, 469); Figone, Antonio (335, 571, 572); First National Bank of Nevada as Trustee (179, 179½, 259); Fisher, Cletus M. (256); Fleming, Charlotte (55, 56); Flick, Margaret B. (514, 601, 602); Flint, Herbert (226); Flyge, Ludwig (431); Folk, Otis B., Campbell, James L. & Crowder, Philip (244); Foote, Harry S. (454); Ford, Frances D. & Robert H. (179),; Ford, Neal K. & wife Ruby (454); Foreson, Alfred E. (200, 233, 322); Fox, Forrest & Margaret (449); Frandsen, Katherine (250); Franklin, Tamara (443); Fraser, Wm. H. (170); Frazer, Ray S. (322); Frey, Leo and Frances A. (178½, 179, 257); Frohlich, A.C. (209); Frost, Demarino (743); Frost, Harry J. & Ethel (68); Frosig, Arthur & wife Mamie (358, 359); Fugit, John Cleveland & wife Mildred (18, 90); Fuller, May Bell & M.K. (175).

(GG) Galvin, Joseph & wife (324, 578); Games, J.R. (64, 173); Garaventa, Luigi (625); Garaventa, Serafino (613, 614); Garbarino, Joe (159); Gardella, Joseph (78, 188); Gardella, Margarita (now Mrs. M. Vipiana (598, 599); Gardella, N. (54, 147); Garson, Sina (46); Gaspari, Caesar, Emilio & Joseph (350, 350a, 354); Gault, Chas. J. (313); Gault, J.H. (310); Gelmsted, Ada A. & husband John (232); General Petroleum Corp. (400); General Service Station (431); George, C.L. (462); Gerow, Mrs. Echo (.....); Getchell, N.H. (177); Ghigerri, Amelia (185, 186, 581);

Ghiglieri, Milo & wife Jennie (208, 244); Ghisletta, Paul (340); Gibson, L.E. (247); Gilmour, William P. (72, 72a, 186); Gilstrom, Albertina (443); Gino, Frank & Frank Motara (294); Ginocchio, John D., William J. and Joseph E. (81, 82); Giroux, Roland J. (492); Gladding, Eva (431); Goddard, N.T. (244); Goff, Ira & wife (389); Goldner, Florence D. & Arthur (252); Gooch, Walter H. & wife Marion P. (64, 173); Gorman Thomas K. (Roman Catholic Bishop-134); Gotchy, Lloyd E. & wife Helen B. (454); Gottardi, Mrs. A. Theresa (557); Gould, Prudence H. (498, 500); Granata, Archie & wife Angelina (454); Gray, Harry & wife Lilah B. (429); Green, Dorothy J. (247); Greenridge Syndicate (64); Greenswig, Frank & wife Ida (389); Grifantini, V. & wife Maria (454); Griffin, Wm. & wife Pearl (249); Grose, Grace (328); Grose, Louise J. (316); Grose, Thomasine (329); Guisti, Veneno & Geny (454); Gulledge, Virgil C. & wife Thelma (244); Gunsburg, Gertrude (438).

(HH) Haddock, F.J. (179); Hallis, John J. & wife Olive L. (271); Hamill, M.H. & wife Grace (177); Hamlin, Clarence S. & wife Alma (244, 153); Hammersmark, Orva (206); Hammond, Gertrude (429, 440); Hancock, Chas. H. & wife Maggie (454); Hancock, Luke B. & wife Hazel H. (454); Hanna, Dale L. (247); Hanna, Edward O. & wife Minerva E. (440); Hanna, Laura (615); Hanser, Anna (125); Hanson, Florence (498); Hanson, Hans (103); Hanson, N.J. (125, 126); Hanson, Walter R. & wife Alta B. (133); Hanson, Walter (125); Hardison, Zelma V. (177); Hardy, Cornelia & husband Telge F. (153); Harper, Harry (454); Harper, Twyman C. (244); Harrington, Earl W. (389); Hartock, Kurt & wife Julia (454); Hastings, L.L. & Marie (136a); Haverland, Chas. H. & wife Bertha S. (434); Hawkins, Leonard (147); Heater, Clair & wife Alice (209, 210); Heidrick, Adelaide (456); Heidtman, H.C. (69, 440);

Hermerly, Herbert & wife Elizabeth (408); Herman, A.J. (.....); Herman, Raphael & Norman (130); Hermansen, Victor E. (443); Herman, Francis J. & wife Ethel (179); Heric, Fred Roy (209, 210); Hess, Jesse & Herbert (449); Hess, Mary (244); Hiell, Geo. (408); Hiell Raymond L. (408); Hiatt, Carolyn I. (244); Higgins, Agnes M. (411); Higley, Chas. A. & wife (443); Hill, August (452, 454, 456, 467, 468, 438); Hill, Eliza & Wm. (452); Hitchens, Richard A. & wife Leona H. (153); Hobson, Joe & Thelma (141); Hobson, Richard & wife Marietta (177); Hoffman, John L. & wife Ellen (244); Holcomb, Geo. & wife Grace (223); Holgate, Arthur E. & wife Phyliss (247); Hollenbeck, H.A. (615); Hollingsworth, W.R. (244); Holtz, Angie S. (555, 559); Hood, Emma M. (454); Hooly, Carl C. & wife Doris (177); Hoover, Carl & Ruth (452); Hopper, W. & wife Alameda (64, 173); Horgan, Edward J. & wife Grace Cantlon (454); Horgan, J.E. & Veronica (170); Houghton, Samuel G. & wife B. (356); Howd, Eleanor Johnson (104); Huck, Wm. & Martha (208); Huddleston, Schelley (247); Humphrey J.W. & wife Gertrude (454); Hund, Erwin, J. & wife Eulelia (358, 359); Hunter, Harry M. & wife Lydia Irene (454); Hursh, Vern V. (434).

(II) Indermuhl, Adolph (521); Indiano, Martin (461); Iratcabal, John (251); Isbell, C.V. & wife Mabel (250); Isbell Construction Co. (450, 451); Isola, Dante & Armide, Nello Ceccarelli & Isola Ceccarelli (452); Izrael, Maurice (247).

(JJ) Jackson, Paul F. (251); John, Alfred (178½); James, Edmund & wife Grace (244); Jensen, Carrie (349); Jensen, Viola E. & husband Christian M. (153); Jewett, W.K. (177); Johnson, B.A. & wife Agnes (717); Johnson, Mabel C. & Kilroy, Helen M. (194); Johnson, Sarah Z.

(113, 114); Jones, Elmer C. (605, 606, 606a, 607, 607a); Jones, Robert B. (638).

(KK) Kahn L. Stanley (179); Kanable, Cholteal (247); Kaupp, Ethel B. (206); Kearns, Mrs. J.J. (64, 173); Kessler, Earl & wife Louise (247); Key, Joseph B. (249); Kibble, Mildred (110); King, Herbert & wife (247); Kimberley, A.K. & wife Elizabeth (179); Kingsley, Thos. (407½); Kirchner, Ed & Henry (300); Kirkpatrick, Francis A. & wife Ruth (244); Klein, Margaret Schuyler (454); Kleppe, E.J., Arthur, Eulah, Elsie, Mrs. Fred, Neva, Patricia (617); Kleppe, Fred Jr. (574-575); Kline, Dudley L. & wife Naomi B. (178½, 205); Klitsch, Miss Anna (368); Kohlepp, H.C. & wife Elva (244); Kopenhaver, B.E. & A.Z. (177); Koskela, Wm. W. (743).

(LL) Laing, W.H. (443); Laiolo, Pete & wife Juanita (459); Laiolo, Esther (459); Lampson, Rhoda A. (248); Landis, Martha W. (206, 179½, 259); Lane, Mildred L. (454); Larson, John (181); Larson, Lester J. (454); Latourette, Mildred Peckham (464); Landers, Arthur E. (243); Laughton, George L. (244); Laurence, C.E. (255); Lavagnino, John & wife (177); Lawton Springs Inc. (103); Leonard, A.C. & wife Florence (454); Lee, Daniel (454); Lee, Ed (454); Lepori, Frank (315); Leggett, Helen (440); Lewis, Jess R. & Helen, C. Joslin (177); Lewis, John V. & wife Rosella (178½, 205); Liddell, Parker (440); Lindley, Monaei (337, 338); Ling, Louis L. (57); Linnecke, Otto A. & wife Beverly V. (250); Lituanio, Andre (476, 479); Lombardi, Louis F. (249); Long, J.C. & wife Roma B. (55); Long. J.R. (.....); Lothrop, Sarah F. (31); Lott, Esther (.....); Lowery, Nellie (244); Loyd, Earl E. & wife Wilma M. (177); Loyd, Elmer (498); Lund, Thor E. (158).

(MM) MacIlravey, Mary E. (345); MacPhee, Carl H. & wife Ethel E. (133); McCafferty, C.A. (431); McCafferty, Edith (431); McCarran, P.A. (Pat) (625½, 626, 626a, 627, 629½); McCloud, E.E. & wife Louise (55); McCray, H.F. (160); McDermott, Ethel (153); McDonald, Elvira (234); McEwen, Clara E. (389); McGinnis, Wm. J. & wife Esther M. (452); McGuigan, Arthur (177); McKay, Zelma R. (445, 454); McKenzie, Hazel A. (48); McKernon, George & wife Helen (178½); McMahon, Willis A. & wife Leona M. (247); McMillen, C.W. & wife Edith (256); McMurdo, William (741); McNair, William (178½, 205; McNeilly, Harold A. (407¾); Machabee, Nola C. & Julia (177); Mack, T.W. (154, 165); Maffi, Joseph (431); Magzen, Mateo (162, 206); Maggiolo, John (459); Manha, Joe (297); Mann, August & daughter Katherine (454); Mansfield, Tom (191); March, Peter J. & wife Susan (357); Margrove, Frank & wife Emma (432); Marks, Peter (54); Marks, Ray (177); Marks, Raymond & wife Thelma (177); Marshall, Harrison & wife Matilda (244); Marti, J.B. & wife Ann K. (179); Martin, Anne H. (154, 165); Martin, D.J. (454); Martin, Joe (.....); Martin, Zack (243); Martinelli, Lawrence (297); Martini, G. (576); Masters, Donald E. & Eleanor (55); Matley, Clifford L. & wife Winona C. (522); Matteoni, Silvio & Narcisco (568, 568a); Maxwell, Agnes J. & Alice H. (516); May, Wilbur D. (74, 707, 718, 728); Mazour, Anatole J. & wife Lucile J. (454); Meginness, Robert V. (454); Meizel, Jeanne & Aubin J. (301, 311); Melilo, Ted A. & wife Helen E. (208); Memmer, Adolph & wife Anne (252); Menente, J.A. (106, 107); Menard, Allen (429); Messick, James B. (244); Metzger, Harry M. & wife Hattie R. (55); Meyer, Clarence J. & wife Merriam L. (244); Meyer, Lotta (449); Miles, Henry H. & wife Bernice (209, 210); Milligan, Wm. & wife Mary Francis (55); Moltzen, Thomas & wife Harriet D. (454); Moltzen, Thomas & Fitch, Leroy A. (179); Mongolo,

Frank (247); Mongolo, Giggia (250, 330, 569); Moore, Mrs. C.H. (155, 157); Morgado, Jose & wife Mary J. (.....); Morgan, Perry & wife Amelia (206); Morris, Edward F. & wife Fannie (244); Morris, Palmer M. & wife Ona A. (55); Morris, Morgan & wife Clara (498); Morrison, James (593); Mortensen, James (429); Moulton, Olin C. & wife Virginia (177); Muran L. (508); Murphy, Annie Isabelle (522); Myler, E.J. & wife Mary (411).

(NN) Nall, Gail L. (209, 210); Nay, Orvis W. & Grace (443); Nelson, Charles & Laura (110); Nelson, Herman V. & wife Jennie (133); Nevada Industrial Loan Corp. (431); Nevada Rock & Sand Co. (400); Newman, Martin & Margaret (498); Nichols, Albert W., Florence M., Marion C. (532, 533, 579, 580, 611); Nicora, Albert (630); Niel, Alice T. (454); Norbeck, Lucy H. (177); Norris, C.B. (431); Novelly, O. & O. Co. (132, 80); Noyes, John H. & wife Wilma M. (244); Nozu, Frank E. (279).

(OO) Oakley, Edith E. (431, 432); O'Connell, T.D. & wife Margaret (179); Oden, R.E. & wife Zoe (431); Oetting, Freda (305); Ohls, C.C. & Albino (209); Olds, Sarah E. (251, 454); Olivia, Fred (293, 294, 295); Olsen, Carl E. (452); O'Rourke, Arthur J. (243); Ortiz, Ralph J. & wife Margaret (133); Otteraaen, Earl & wife Lina (202, 203, 204); Otteraaen, Lena (301); O.Y. Land & Cattle Co. (74, 79, 189).

(PP) Packer, H. (357); Page, Arnold S. (70); Pagni, Attilio (673); Palen, Botella (448); Pappas, Gus, Nick & Paul (454); Pappas, Wm. (208); Paradis, Ed. E. & Mary E. (249); Parke, Ella F. & Chas. S. (249); Parker, George (178½, 205); Parker, H.A. (454); Parks, Lucille S. (177); Parson, Edward (454); Partipilo, Mary Dormio (271); Passno James R. & LeRoy V. (431); Paterson, Charles D. &

wife Evelyn (454); Paterson, Wm. (249); Pecetti, Bud & Ela (74, 226); Pecetti, Frank & Elmer W. (77); Peckham, Edward M. (463, 464); Pedler, C.F. (69); Pedretti, August & Jennie Antone (506); Peigh, H.A. (89); Pence, Nola Gabrielda (443); Pereira, John & Olive (317); Peri, Julia (624); Perry, Geo. (454); Petersen, Adah E. (154, 165); Peterson, Herman & wife Amy T. (179); Petri, Daisy (454); Pozzi, John (600); Phenegar, John F. & wife Paralee (426); Picetti, John (24); Pickens, Emma G. & Harvey A. (241); Pierce, Chas. Victor & wife Juanita Alice (247); Pierce, Frank & wife Bleva (208); Pike, Allan R. & wife Patricia (232); Pillsbury, Mrs. Horace D. & Mary (208½); Pimental, Francisco J. & wife Gertrude Hash (498); Pimental, Tony (127, 127a); Pincolini, Elma Josephine (141, 299); Pincolini, E. & Nora (87, 88, 88a); Pisani, A. (251); Plath, Bonnie E. (252); Pledger, Raymond & wife Alice (209, 210); Plumb, Beatrice, Edward and Joyce May (153); Plumb, Edward (153); Plumb, Kate (153, 198); Plumley, Alden J. & wife Martha H. (178½, 206); Polk, Angus (301); Pool, Wm. C. & wife V.S. (133); Poulsen, Russell & wife Virginia Lee (249); Powell, J.S. & wife Dolores (431); Preece, Clarence J. & wife L.O. (133); Prescott, June C. (454); Puddington, George & wife Grace (133); Pultz, Thelma (209, 210).

(QQ) Quadrie, Lawrence & Annie M. (498); Quanchi, P. (387); Quilici, Angelina, (17, 17a); Quilici, Mario & Guilio (470, 471); Quilici, E.M. (72, 186); Quimby, George & Ann (454); Quinn, Frank P. (191); Quivey, Robert W. & Ruth (250); Questa, Silvo & wife Jennie (603).

(RR) Rae, Roy & wife Neva (718); Raffetto, Joseph L. (342); Raffetto, Louis (615); Raine, J.P. (456); Raine, Robert (427); Ralston, Ethel (177); Ramelli, Caesar & Julius C. (709, 710, 711, 712, 713); Ramelli, Edith & Mona

(388); Ramelli, Wm. M. & wife Nora E. (60, 61); Ramsey, Keston L. & wife Carlisle M. (249); Randall, Edward & wife Bernice (133); Rankin, Martha Pedersen (93, 93a, 724, 724a, 724b, 724c); Rastelli, Steve & Marie (429); Ratzlaff, David B.(428); Ravera, Bert & wife Lenora (443); Rebori, Wm. (250); Record, Maude P. (256); Reed, Burt A. (178½, 205); Reese, Mary Edna (245); Reeves, J.H. (244); Reilly, D.W. (568); Reno Lodge No. 13, F. & A.M. (122); Reno Securities Co. (351); Reno Trap Shooting Club (A.A. Brundidge- (251, 454); Rewana Farms Inc. (474); Rey, Louise M. (434); Rhodes, Bryce (247); Rice, Henry L. & wife Mildred (360); Rice, Lois M. (157); Rice, Lois as Guardian for Marie, Floyd & Bertha Pisco (116, 117); Richardson, J.L. (69a, 69b); Riddick, Bert (452); Rissone, Rodolfo (123, 169, 364½); Roberts, Lucile O. (51, 509); Robinson, Bernard B. (454); Robinson, J.L. & wife Elizabeth Evans (616, 618); Robison, Donald & wife Ruth M. (182); Rockwood, C.W. (55, 56, 151); Rodriguez, Earnest & Helen (153); Rogers, Mrs. Alice (400); Rogers, Daniel R. (209, 210); Root, Louise F. (243); Root, Lynott, B. & wife Dorothy E. (249); Ross, Kenneth W. & wife Carol B. (55); Ross, Randall T. (454); Rossi, Natalie (520, 584); Rovetti, Marion L. (249); Ruark, Chas. Wm. & wife Margaret (178½, 205); Rucker, Melvin L. (133); Ruedy, Clifford J. & wife Anne B. (153); Rueff, Isabell E. (408¾); Rumbaugh, Dana L. & wife (133); Rusk, Wally R. & wife Thelma E. (454); Russell, George H. & wife Dorothy Peary (209); Ryan, Elizabeth (154); Ryan, John J. (208½); Ryan, Paul (431).

(SS) Sandry, Ernest L. (209, 210); Saturno, Joseph & Victor (231, 356); Sauer, George (208½); Sauer, Richard P. & wife Lucille B. (454); Savage, Leonard C. & wife Gertrude (64, 173); Saviers, C.E. & wife Bessie (64, 173);

Saxby, Harvey B. & wife Rachel (133); Scanavino, Joe (58); Scarlett, J.B. (438, 443, 206); Schauer, Karl & wife Madeline (208); Schiappicasse, Mary (148, 229); Scheuller, Albert & wife Virginia J. (178½, 205); Schmidt, Roy B. & wife Louise (431); Schmith, Louis (434); Schragle, Albert (431, 432); Schneider, Jess & Audrey (498); Schroeder, Arthur A. (194); Schutz, J.F. (177, 244); Schutz, Mary E. (498); Scolari, Lizzie & Oscar (53); Scossa, Eugene (707); Scott, Ernest & wife Irene (247); Scott, J.M. (202, 203); Scott, Wm. Keith (454); Scott Motor Company (179, 206); Sealy, Ida M. (407½, 407¾); Sears, Cushman and Velma Irene (351); Secord, Walter & wife Amy Myrtle (208); Seeds, Dorsie C. (244); Seely, Edgar J. & Lorna (431); Sciarroni, Frank (202, 203, 206); Sellman, Cora May (454); Seltzer, Richard L. & Cora (456); Semenza, Maria (585); Senseney, H.M. (208½); Serpentino, Annie Marie (141, 299); Sesinger, William (133); Shaber, Geo. B. & Ethel M. (452); Shaddock, Geo. & wife Sarah (494); Shair, Fred Jr. (152); Shaw, Ruth L. (244); Sheen, Byrul L. & Loretta J. (452); Sherman, C.L. (177); Shidler, Wilbur K. & Mary B. (133); Shirton, Lorne M. & Eleanor (244); Short, Chas. H. (250); Shriver, W. Henry Clay (736); Sierra Pacific Power Company (95, 95a, 96, 99); Silva, Manuel B. (102, 128, 129, 142); Silver State Lodge (271); Skipper, C.H. (452); Slingerland, J.E. (191, 251); Smellie, Ernest & Carolyn D. (454); Smilenick, George & wife Bobbie (454); Smith, Atly A. (498); Smith, David Roy (652, 653); Smith, I.J. (250); Smith, James M. (454); Smith P.B. & wife Ida (133, 357); Smith-Peterson Co. (401, 402, 357, 398, 520); Smith, Ralph D. (578, 324); Smith, Roy (654); Smith, Sargent (408); Snyder, Howard & Alice (452); Sobrio, Alex B. & wife Bonnie J. (358); Solari, Camile & wife Julia (179); Solseth, Oliver H. (454); Sorge, Nick (226, 277, 361, 362); Souter, Clyde D. (243); Souza, Fred (128, 129); Spangler, Jack &

wife Elsie E. (454); Spencer T.D. & Marion (136, 136a); Spezia, I.T. & Bertha (271); Spradling, Geo. M. & wife Irene F. (454); Springer, C.F. (743); Springer, Edgar J., Clarence Floyd & Solomon J. (743); Springmeyer, Sallie R. (250); Staats, Everett F. & wife Evelyn (209); Stadtmuller, Clara F. (154); Stahr, Roland & Dudley C. (454); Standard Oil Company (271); Stanley, Carle B. & wife Alys (454); Starr Rock & Sand Co. (408); Stead, James E. & wife Marian M. (343, 346, 347); Steele, Mary A. (524, 596); Stephens, Grace (244); Stevens, Harold (571); Stewart, Bradley (251); Stewart, T.K. (498); Stillwell, Allen C. (153); Stinton, Frank A. & wife Kathryn (454); Stoddard, Carl (128, 129); Stoddard, Daisy E. (381); Stone, Jewell F. & wife Valeria (408); Stover, J.H. & Gladys R. (443); Strosnider, Jessie (67); Steinheimer, Edward (177); Sturn, Wm. & Hattie (209); Suffal, Bessie C. (206); Sutherland, E.G. (256); Sutherland, J.B. (389); Sutton, Walter A. & M. Catherine (133); Swalley, R.J. (177, 204, 261); Swan, Mrs. E.J. (249); Swanholm, Carl S. & wife Elizabeth B. (454); Swanson, Harry & wife Cleo (178½, 205); Sweetland, Cora E. (208); Swesey, Alfred C. & wife Nellie (441); Swing, Ed (443); Swope, Carroll C. & wife Anna L. (133).

(TT) - Tacchino, A. (409); Tait, J.R. & wife Catherine (256); Talbot, W.C. (206); Tolotti, Emil P. & wife Helen M. (249); Tamka, Harold W. (206, 251); Tarner, Ada M. (738); Taylor, T.L. (431); Teglia, Roger (407); Thatcher, Reno (213); The Bee Inc. (574); Thomas, Helen Marye (644); Thomas, Richard F. (153); Thompson, Christie (454); Thompson, Rader (232); Thompson, Walter (244); Thomsen, Mary (215, 216, 217); Threlkel, J.R. (401, 402); Todd, John (431); Tolotti, Albert & Mary (357); Touzen, Claude W. (133); Trosi, Emma Herz (337, 338); Tunison,

Edna Marie (153); Turner, Courtney S. (206); Tyler, Ralph & wife Viola (431).

(UU) United Air Lines (.....); Union Ice Company (271); Union Paving Company (407, 408); Urrutia, Salvador (637).

(VV) Valley Concrete Pipe & Products Co. (Nevada Concrete Pipe Co. (409); VanDover, Harry (558); Vargas, George (395, 408); Voss, E.J. (208); Vhay, David & wife Mary Ellis (179).

(WW) Wagner, D.E. & Helen (178½); Wagoner, Ralph B. & wife Hildeth (452); Walling, Nettie Grace (452); Waltz, Fred C. & Ione V. (454); Walters, Patrick R. & Wife Elizabeth F. (108, 52½); Wanke, Bert R. (743); Warner, Charley (247); Warren, Geo. F. & wife Margaret (177); Washburn, Wesley A. (632); Watkins, Wellesley Walter & wife Eria (152); Webb, Wm. L. & Myrtle (244); Wells, Howard T. & Gertrude M. (620); Wells, R.C. & wife Willafred C. (249); Wells, Wm. & wife Caney (452); Weisenfluh, Louis H. & Clara A. (454); West, Cecil G. & wife Belle (331); Western Lands Inc. (249); Western Pacific Railroad Co. (.....); White Pine Lumber Distrib. Corp. (177, 206, 221); Westover, Pauline (158); White, Theda F. (256); White, Virginia (454); Whitely, Wilson A. (178½, 205); Whittell, George (247); Whitty, R.C. & wife S.E. (719); Wilbur, Leonard & wife (153); Williard, J.H. (431); Williams, F.A. (279); Williams, Paul C. (244, 280, 130); Williams, Tytus & Gladys (382); Willis, Meredith (717); Wills, C.P. & wife Evelyn (717); Willshire Oil Co. Inc. (452); Wilson, Dudley E. & wife Marie (179); Wilson, Mary E. (165½, 168, 646, 646½); Wine, W.H. & Emma (250); Wohlbruck, Harriet S. (452); Wolfersberger, Edward

(208½); Woodward, O. Frank (64, 173); Woody, Mae & Fred (431, 432); Worden, Clarence (203); Wilcox, Maud (452); Wilkins, Lawrence Joe & wife Freda (55); Williams, Elsa & Stuart L. (243); Wright, Claire Gleason & Billie Gail Orton (133); Wright, Irvin C. & wife Pearl (121, 368); Washoe County Water Conservation District.

(YY) Yates, Carrie (179); Yoakum, Dagmar & Emil (208½, 181); Yori, Geo. H. & wife Vera (302); Yori Land & Livestock Co. (302, 387, 404, 502); Yori, Mark Jr. (502); Young, Irvin J. & Georgia M. Young (250).

(ZZ) Zenklusen, Frank (590); Zubieta, Frank (567); Zumoff, Harry & wife Anna B. (209, 210); Kempton, L.A. and Kempton, Genevra (514, 601, 602).

Solicitors for the United States: Ethelbert Ward, John F. Truesdell and Oliver P. Morton, special assistants to the Attorney General, William Woodburn, as former United States Attorney for the District of Nevada; George Springmeyer, United States Attorney for the District of Nevada, and R.G. Withers. Solicitors for numerous defendants are as hereinafter designated.

It is hereby ordered that all persons herein named as owners, grantors and successors be made and considered parties to this action and that all parties herein named as grantees or successors be substituted for their respective predecessors with all the rights of their grantors and respective predecessors.

ERRATA SUPPLEMENT

Page 8, first column, line 45, "the name of which was changed to, and at the date of this Decree is Sierra Pacific Power Company," should be substituted for "succeeded by Truckee River Power Company, incorporated,".

Page 8, second column, 4th line from the end of subdivision (W), the name "Walliam" should be "William."

In all tabulations where the same appears, the "Solicitor" column should be eliminated.

Page 14, claim 50a, the name "Cardella" should be "Gardella."

Page 17, claim 78, the name "Degioranni" in both instances should be "Degiovanni."

Page 29, claim 209, the following description of lands should be inserted in appropriate columns as indicated:

¼	In of	¼	Sec.	T-N	R-E
NW		NW	31	19	20
SE		NW	31	19	20
NE		NW	31	19	20
NW		NE	31	19	20
SW		NE	31	19	20
SE		NE	31	19	20
NE		NE	31	19	20
SW		NW	31	19	20
NW		NW	32	19	20
SW		SW	29	19	20

Page 34, claim 272, the name "Reno Pressed Brick Company" should be "Reno Press Brick Company."

Page 37, claim 335, "283" in "Acre Feet" column should be "382."

Page 39, claim 350a, "388" in "Acre Feet" column should be "361."

Page 47, claim 442, "60" in "Acre Feet" column should be "40".

Page 56, claim 529, the name "Soroni" should be "Sorani."

Page 56, claims 536 and 527, "5.75" in "Sec. Feet" column should be "2.75."

Page 65, claim 617, the name "Keppe" should be "Kleppe."

Page 66, claim 623, the name "Largmarsino" should be "Largomarsino."

Page 71, claim 642, "457" in "Acre Feet" column should be "957."

Page 75, claim 665, the name "Angelina" should be "Angeline."

Page 77, claims 691 and (665), the name "Josie" should be "Rosie" in each instance.

Pages 77 and 80, the column headings designated "In ¼ of ¼," "Sec..," "T-N," and "R-E" and those designated "Approximate Diversion," "Inches," "Sec. Feet," and "Estimated Transit Loss %," should be transposed.

Page 82, claim 720½, the name "Domingo" should be "Domengo."

FINAL DECREE

This cause having been heretofore heard by the Court and, following argument by counsel, the matter having been referred to George F. Talbot, as Special Master, and the said Special Master having thereafter rendered his report and made his findings, and the same having been approved and adopted by the Court (except as disallowed or modified by the Court) by a certain order termed "Temporary Restraining Order" made and entered in said cause under date of February 13, 1926:

NOW, THEREFORE, in accordance therewith, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

That the parties, persons, corporations, intervenors, grantees, successors in interest and assigns and substituted parties above and hereinafter named and their successors in interest and assigns are, and each of them is, as against every other one, hereby adjudged to be the owners of the water rights hereinafter specified and set forth and entitled and allowed to divert and use, from the Truckee River and its tributaries and from the streams, springs, drain and waste waters hereinafter mentioned, and by and through their respective ditches, canals, flumes, dams and reservoirs, for the irrigation of their respective hereinafter described lands, for generating electricity and power, for municipal purposes, for supplying the people living in cities and towns, for reclamation of arid lands, for watering livestock, for domestic uses and other beneficial purposes, water in the respective amounts and subject and according to the respective dates of appropriation and priorities as hereinafter stated, found and allowed.

TRUCKEE RIVER DIVERSIONS

Government rights

INDIAN DITCH

Claim No. 1. By order of the Commissioner of the General Land Office made on December 8, 1859, the lands comprising the Pyramid Lake Indian Reservation were withdrawn from the public domain for use and benefit of the Indians and this withdrawal was confirmed by order of the President on March 23, 1874. Thereby and by implication and by relation as of the date of December 8, 1859, a reasonable amount of the water of the Truckee River, which belonged to the United States under the cession of territory by Mexico in 1848 and which was the only water available for the irrigation of these lands, became reserved for the needs of the Indians on the reservation.

For the irrigation of 3130 acres of Pyramid Lake Indian Reservation bottom lands, plaintiff, the United States of America, is entitled and allowed to divert from the Truckee river through the Indian Ditch, the intake of which is on the left bank of the river in Section 18, T. 22 N., R. 24 E., Mount Diablo Base and Meridian, not exceeding 58.7 cubic feet of water per second to an amount not exceeding 14,742 acre feet of water in any calendar year with a priority of December 8, 1859; provided the amount of water so to be diverted shall not exceed a flow of one miner's inch, or one-fortieth of one cubic foot per second per acre for the aggregate number of acres of this land being irrigated during any calendar year and the amount of water applied to the land after an estimated transportation loss of 15 percent, shall not exceed 85-100 of an inch or 85-100 of one-fortieth of one

cubic foot per second per acre for the total number of acres irrigated, and provided that the amount of water so diverted during any such year shall not exceed 4.71 acre feet per acre for the aggregate number of acres of this land being irrigated during that year, and further provided that the amount of water applied to the land shall not exceed four acre feet per acre for the aggregate number of acres of this land being irrigated during any calendar year.

This water is allowed for the United States and for the Indians belonging on said reservation and for their use and benefit and is not allowed for transfer by the United States to homesteaders, entrymen, settlers or others than the Indians in the event that said lands are released from the reservation or are thrown open to entry or other disposal than assignment or transfer to the Indians.

Claim No. 2. In addition to water for the above mentioned 3130 acres of Pyramid Lake Indian Reservation bottom lands, the Government is hereby and will be allowed to divert water from the Truckee River, with a priority of December 8, 1859, to the amount of one-fortieth of one cubic foot per second per acre for the irrigation of 2745 acres of Pyramid Lake Indian Reservation bench lands. The water so allowed for bench lands may be diverted from the Truckee River through the Truckee Canal or any other ditch now or hereafter constructed as the plaintiff may desire or authorize; provided that the amount of water for bench lands shall not exceed during any calendar year 5.59 acre feet per acre diverted from the river, nor exceed during any calendar year 4.1 acre feet per acre applied to the lands,

for the aggregate number of acres of this land being irrigated during any year.

This water is allowed for the United States and for the Indians belonging on said reservation and for their use and benefit and is not allowed for transfer by the United States to homesteaders, entrymen, settlers or others than the Indians in the event that said lands are released from the reservation or are thrown open to entry or other disposal than assignment or transfer to the Indians.

DERBY DAM AND TRUCKEE CANAL

Claim No. 3. Under the Reclamation Act of June 17, 1902, the United States, acting by the Secretary of the Interior, on July 2, 1902, withdrew from public entry, excepting under the homestead laws in accordance with the provisions of the Act, the lands required for the Government's first reclamation project, now known as the Newlands Project. Thereupon and with due diligence the United States proceeded with the construction of the Derby Dam across the Truckee River in the SW¼ of Section 19, in T. 20, N., R. 23, E., Mount Diablo Base and Meridian, and with the construction of the Truckee Canal, with a carrying capacity of 1,500 cubic feet of water per second, running from this dam a distance of 31 miles to the Lahontan Reservoir on the Carson River, and with the construction of the Lahontan Reservoir, with a storage capacity of 290,000 acre feet, and with the construction of about 250 miles of lateral and sub-lateral irrigation canals sufficient for carrying water for the irrigation of 151,000 acres. On April 30, 1919, the Government had expended for this project $6,252,000.00. the lands so withdrawn for

reclamation are naturally dry and arid and without the application of water are of little or no value, but with irrigation will produce valuable crops and furnish homes with support for a large population.

Subject to prior appropriations and vested rights permitted and confirmed by the Act of Congress of July 26, 1866, the plaintiff is entitled and allowed to divert, with a priority of July 2, 1902, through the Truckee Canal 1,500 cubic feet of water per second flowing in the Truckee River for the irrigation of 232,800 acres of lands on the Newlands Project, for storage in the Lahontan Reservoir, for generating power, for supplying the inhabitants of cities and towns on the project and for domestic and other purposes, and under such control, disposal and regulation as the plaintiff may make or desire, provided that the amount of this water allowed or used for irrigation shall not exceed, after transportation loss and when applied to the land, 3.5 acre feet per acre for the bottom lands, nor 4.5 acre feet per acre for the bench lands under the Newlands Project.

LAKE TAHOE STORAGE

Claim No. 4. Under the Reclamation Act and for irrigation and other beneficial uses on lands under said project and on lands within the basins of the Truckee, Carson and Humboldt rivers in Washoe, Storey, Lyon, Churchill and Humboldt counties, in the State of Nevada, and pursuant to notice posted, by direction and authority of the Secretary of the Interior and for and on behalf of the United States, on the right bank of the Truckee River at the site of the dam in said river near Tahoe City and in Placer County, California, and about 500 feet downstream

from Lake Tahoe, on the 21st day of May, 1903, plaintiff is entitled to, and is allowed with a priority of that date and during all seasons of the year, to have flow into and to hold and store in Lake Tahoe and in a reservoir made of said lake by a dam at said site in said river constructed with the spillway crest thereof six feet above the floors of the flow-ways of said dam as then existing, all waters of or coming into said river or said lake, both surface and under flow, to the extent of 3,000 cubic feet per second and to the extent of the capacity of said lake as a reservoir made by said dam, to said height and subject to the continuous outflow through said river from said lake or reservoir so made by said lake or dam, of such an amount of water as plaintiff may desire to release or may discharge from said lake or reservoir not exceeding at any time a flow of 3,000 cubic feet of water per second.

In addition to the above specified rights, the United States is entitled to store, discharge and control water in Lake Tahoe as provided in the judgment and decree filed and entered on June 4, 1915, in the case of the United States, plaintiff, versus The Truckee River General Electric Company, a corporation defendant, in the District Court of the United States in and for the Northern District of California, Second Division, and subject to said decree the United States shall be entitled to discharge from Lake Tahoe an amount of water sufficient to deliver to the head of the Truckee Canal at the Derby Dam, after transportation loss, 1,500 cubic feet per second. The plaintiff is entitled and allowed at will to release and discharge any of the water stored, or by this decree allowed to be stored, in Lake Tahoe and to flow the same and any other water to which it is entitled, according to its priority, through the Truckee River to the Derby Dam and there divert the

same through the Truckee Canal for irrigation, for storage in the Lahontan Reservoir, for generating power and for other purposes. The rights of said defendant Sierra Pacific Power Company (formerly The Truckee River General Electric Company) under said judgment and decree are hereby recognized and confirmed.

Power Ditches

FARAD PLANT

Claim No. 5. The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Farad Power Flume, which has its intake on the north bank of the Truckee River in the S½ of Lot 6 in the NW¼ of Section 30, Township 18 North, Range Eighteen East, sufficient water, with a priority of the year 1899, to deliver, after transportation loss, to the wheel of the Farad Hydro-Electric power plant, 325 cubic feet of water per second and sufficient additional water with a priority of 1906 to deliver, after transportation loss, to the wheel of said plant, 75 cubic feet of water per second, said plant being situate in the SE¼ of Section 12, Township 18 N. R. 17 E., for the generation of electric power in said plant.

FLEISH PLANT

Claim No. 6 The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Fleish Power Ditch and Flume, which has its intake on the east bank of the Truckee River in the SE¼ of Section 6, Township 18, N. R. 18 E., sufficient water with a priority of February 16, 1904, to deliver, after transportation loss, to the wheel of

the Fleish Hydro-Electric power plant, 327 cubic feet of water per second, said plant being situate in the NE¼ of the SE¼ of Section 30, Township 19 N. R. 18 E., for the generation of electric power in said plant.

VERDI PLANT

Claim No. 7. The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Verdi Power Ditch and Flume, which has its intake on the east bank of the Truckee River in the SE¼ of the SE¼ of Section 19, T. 19 N. R. 18 E. sufficient water, with a priority of October 21, 1909, to deliver, after transportation loss, to the wheel of the Verdi Power Plant 399 cubic feet of water per second, said plant being situate in the SE¼ of Section 8, T. 19 N. R. 18 E. for the generation of electric power in said plant.

In addition to such diversion for power purposes, Sierra Pacific Power Company, a corporation, is allowed to divert from said river through the Verdi Power Ditch 220 inches or 5.50 cubic feet of water per second for supplying the Katz Ditch for irrigation to the extent and with the priority hereinafter allowed to this company, for the Katz Ditch under irrigation rights.

In addition to such diversions for power purposes and for so supplying the Katz Ditch with water for irrigation, Sierra Pacific Power Company, a corporation, is entitled and allowed to divert and transport from the Truckee River, through the Verdi Power Ditch and Flume and to deliver to Verdi Lumber Company, a corporation, and Verdi Lumber Company is entitled to have diverted from

said river through said ditch and flume by, and to receive from the Sierra Pacific Power Company, 100 inches of water with a priority of the year 1894 for supplying and maintaining the log pond of the Verdi Lumber Company in the Town of Verdi, and for logging and saw mill purposes.

WASHOE PLANT

Claim No. 8. The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Washoe Power Ditch and Flume, which has its intake on the south bank of the Truckee River, in the NW¼ of the NE¼ of Section 16, T. 19 N. R. 18 E. sufficient water, with a priority of October 27, 1902, to deliver, after transportation loss, to the wheel of the Washoe Hydro-Electric Power Plant 396 cubic feet of water per second, said plant being situate in the SW¼ of the SW¼ of Section 14, in said township and range, for the generation of electric power in said plant.

Of the water so allowed to be diverted through the Washoe Power Ditch and Flume, Sierra Pacific Power Company is allowed to use during the irrigation season 12.4 inches or .31 cubic feet of water per second, not exceeding a seasonable amount of 50 acre feet for the irrigation of 12.4 acres of its land as hereinafter described and provided under Washoe Power Ditch under irrigation rights.

Also of the amount of water allowed to be diverted through the Washoe Power Ditch, Sierra Pacific Power Company is entitled and allowed to deliver to the defendant Leonidas Frederick Johnson and he is entitled and allowed to have and receive from Sierra Pacific Power Company, 50 inches or 1.25 cubic feet of water per second,

to the seasonal amount of 257 acre feet, for the irrigation of his lands as described and as provided hereinafter under Washoe Power Ditch under irrigation rights.

RENO PLANT

Claim No. 9. The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Reno Power Ditch and Flume, which has its intake on the south bank of the Truckee River 1365 feet north, 35 degrees west from Quarter Section corner between Section 15 and 16, T. 19 N.R. 19 E. sufficient water with a priority of March 31, 1891, to deliver, after transportation loss, to the wheel of the Reno Hydro-Electric Power Plant, 250 cubic feet of water per second, and sufficient additional water with a priority of November 1, 1909 to deliver after transportation loss, to the wheel of said plant 46 cubic feet of water per second, said plant being situate in NE¼ of NE¼ Section 15, in said township and range, for the generation of electric power in said plant.

In addition to such allowed diversions for power purposes through the Reno Power Ditch and Flume, Sierra Pacific Power Company is entitled and allowed to divert from the Truckee River and convey through said ditch and flume and deliver to defendants Sarah McClure, James Murray, William Murray and Sam Murray and their successors, and they are entitled and allowed to have and receive from said company, 50 inches of water for the irrigation of their lands as hereinafter described and provided under Indian Flat Ditch under irrigation rights.

RIVERSIDE MILL DITCH

Claim No. 10. The Riverside Mill Company, incorporated, owner, is entitled and allowed to divert at all times from the Truckee River, through the Riverside Mill Ditch and Flume, which has its intake on the north bank of the Truckee River at a point 84 feet westerly from the center of Chestnut Street in the City of Reno and in the NW¼ of the SE¼ of Section 11, T. 19, N., R. 19, E., 70 cubic feet of water per second with a priority of May, 1863, for operating the Riverside Flour Mill in the City of Reno and for generating power and for milling purposes.

WADSWORTH POWER PLANT

(Solicitor: James T. Boyd)

Claim No. 13. The Wadsworth Light and Power Company, incorporated, owner, is entitled and allowed to divert at all times from the Truckee River, through the Wadsworth Light and Power Company Ditch, which has its intake on the north bank of the Truckee river in the NW¼ of the SW¼ of Section 13, T. 20, N., R. 23, E., Mount Diablo Base and Meridian, 31.3 cubic feet of water per second with a priority of June 26, 1897, for delivering, after an allowed transportation loss of 20 per cent, 25 cubic feet of water per second to the wheel at the pumping and power plant of this company, situated in the SE¼ of the SE¼ of Section 33, in T. 21, N., R. 24, E., M.D.M., for the operation thereof and for pumping and for generating electrical and other power.

WADSWORTH WATER SUPPLY
(Solicitor: James T. Boyd)

Claim No. 14. In addition to the amount of water so allowed to be diverted for generating power, for pumping and the operation of its plant, the Wadsworth Light and Power Company is entitled and allowed to divert at all times from the Truckee River through its said power ditch, for supplying the Town of Wadsworth and the people living in or near this town with water for fire protection, for the irrigation of their lawns, gardens and lands, and for household and other purposes, 3.13 cubic feet of water per second with a priority of June 26, 1897, for the delivery, after an allowed transportation loss of 20 per cent, of 2.5 cubic feet of water per second to the reservoir of said company in the SE¼ of the SE¼ of Section 33, in T. 21, N., R. 24, E., M.D.M., and to said people for said purposes. (See Irrigation Rights for irrigation water allowed under this ditch, No. 635.)

WINTER DITCH REGULATION

The owners and operators of ditches through which the diversion of water is allowed for generating electricity and power and for milling, mechanical and municipal purposes, and for supplying the inhabitants of any city or town, whenever ice shall collect in any of their ditches, shall be allowed to divert from the Truckee River and use such additional amount of water as may be required for flushing out such ice and so long only as may be required for such flushing, provided that the water diverted for such flushing shall not in any case be more than 20 per cent of the amount which is fixed and allowed by this decree to be diverted through the ditch in which said flushing is done.

All water diverted or used for generating electricity or power or for operating mills or power plants shall be returned directly to the Truckee River after being so used. Extra water for preventing congestion by ice and for flushing ice allowed to be used in ditches supplying water for municipal purposes when required must be returned directly to the river when used for these purposes.

IRRIGATION RIGHTS

The parties, persons and corporations hereinafter named and their grantors and predecessors in interest have acquired rights of appropriation in, and have diverted and appropriated from the Truckee River and its tributaries and used for the necessary irrigation of their respective hereinafter described lands, water in the respective amounts and under the respective priorities as stated in the following table. As shown by the following tabulations and columns, each of the parties, persons and corporations named in the columns headed, "Owner," directly or by his, her or its grantor or predecessor in interest, on and continuing after the date in the columns headed "Date of Priority" and opposite his, her or its name or in connection therewith, and through the ditch or ditches named in the columns headed "Ditch" and opposite his, her or its name or described lands, for the necessary irrigation of his, her or its lands as described opposite his, her or its name and in the columns under the words "Acres Irrigated" and following columns, diverted and appropriated water in the amount or amounts stated opposite his, her or its name or described lands and in the columns, headed "Approximate Diversion," and water sufficient to deliver to his, her or its lands after transportation loss, the amounts in flow and acre feet per season stated opposite

his, her or its name or described lands and in the columns under the words "Amount Allowed Delivered to Land":

[Charts Omitted]

HIGHLAND DITCH

1 - Waters for Cities of Reno and Sparks in Addition to Hunter Creek.

Claim No. 98. The head of the Highland Ditch is on the north bank of the Truckee River in SW1/4 of SE1/4 of Section 9 in T. 19 N., R. 18, E., M.D.M. The location notice of the Highland Ditch was filed for record March 30, 1875, and work thereon was commenced not later than July 6, 1875. This ditch was finished and water therefrom used for irrigation and turned in the Highland reservoirs for supplying the town of Reno several years later. In agreements made and recorded in August, 1889, between Highland Ditch and Water Company, predecessors of The Truckee River General Electric Company, and J.N. Evans, predecessor of the J.N. Evans Estate Company, and between Highland Ditch and Water Company and B.G. Clow, predecessor of Grace Clow, it is stated that the right to the first 100 inches of water in this ditch was reserved for service of the system of pipes and works in Reno and that the rights to the next 280 inches of water in this ditch were set over and conveyed in the proportion of 200 inches to J.N. Evans and 80 inches to B.G. Clow, with the same priority for both. (See Claims Nos. 130 and 124)

This agreement also states that subject to any prior rights, the Truckee River General Electric Company is entitled and allowed to divert from the Truckee River, through the Highland Ditch, sufficient water to deliver after transportation loss, through this ditch to the Highland

reservoirs in the east half of the east half of Section 3, in T. 19, N., R. 19, E., M.D.M., 100 inches or 2.5 cubic feet per second of water under an appropriation and priority of date March 30, 1875, for supplying the City of Reno and the people thereof with water for fire protection, irrigation, sanitary, domestic and other purposes.

Subject to prior appropriations and in addition to the amount of water so allowed to be diverted, The Truckee River General Electric Company is entitled and allowed to divert from said river to said ditch an amount of water sufficient to deliver, after transportation loss through said ditch, to said reservoirs 30 inches or .75 of one cubic foot of water per second under a priority of date of January 1, 1900, for so supplying the city of Reno and the people thereof.

For keeping the Highland reservoirs filled with water for fire protection and for supplying the City of Reno and the City of Sparks and the people living in and near these cities with water for irrigation of lawns, household, municipal and other purposes, and subject to prior appropriations and in addition to said amounts of water so allowed to be diverted to said Highland reservoirs under said respective priorities, The Truckee River General Electric Company is entitled and allowed to divert from said river to said ditch an amount of water sufficient to deliver after transportation loss through said ditch, to said reservoirs, 260 inches or 6.50 cubic feet of water per second under a priority of January 1, 1905.

For keeping the Highland reservoirs filled with water for fire protection and for supplying the City of Reno and the City of Sparks and the people living in and near these cities with water for irrigation of lawns, household, municipal and

other purposes, and subject to prior appropriations and in addition to said amounts of water so allowed to be diverted to said Highland reservoirs under said respective priorities, The Truckee River General Electric Company is entitled and allowed to divert from said river to said ditch an amount of water sufficient to deliver, after transportation loss through said ditch, to said reservoirs 180 inches or 4.50 cubic feet of water per second under a priority of January 1, 1919.

For keeping the Highland reservoirs filled with water for fire protection and for supplying the City of Reno and the City of Sparks and the people living in and near these cities with water for irrigation of lawns, household, municipal and other purposes, and subject to prior appropriations and in addition to said amounts of water so allowed to be diverted to said Highland reservoirs under said respective priorities and whenever, as awarded by this decree, the amount of water in Hunter Creek is not sufficient to allow the discharge into the Hunter Creek Reservoir of 9.9 cubic feet of water per second, The Truckee River General Electric Company is entitled and allowed to divert from said river through the Highland Ditch, an amount of water sufficient to deliver to said Highland reservoirs, after transportation loss, a flow of water the equivalent of any such deficiency or the equivalent of the difference between a flow of 9.9 cubic feet of water per second and any lesser amount of water running in Hunter Creek which can be delivered to the Hunter Creek Reservoir as awarded by this decree. The amount of water so allowed to be diverted from the Truckee River through the Highland Ditch to the Highland reservoirs for supplying any such deficiency in the water of Hunter Creek is allowed and is subject to a priority of date of January 1,

1905, for the first 6.50 cubic feet per second thereof and to a priority of date of January 1, 1919, for the remainder thereof.

2 - Irrigation Rights:

Claim No. 99. In addition to the amounts of water so allowed to be diverted for said reservoirs and for uses in connection therewith, The Truckee River General Electric Company is entitled an allowed to divert from the Truckee River through said Highland Ditch, for the following named persons, and their respective successors for the irrigation of their hereinafter described lands, the following respective amounts of water in addition to transportation loss in the transportation thereof, under the following respectively designated priorities:

[Charts Omitted]

BACK DITCH AND JONES WASTE DITCH

The Back Ditch, which has heretofore been called the Frost, Alt and Savage Ditch, the Kiely Ditch and the Kleppe Ditch, was constructed in or about the year 1862, for the purpose of irrigating lands on the Ghigleri ranch, formerly known as the Frost ranch, the Kiely ranch and the Kleppe ranch, and lands on the Alt ranch now owned by defendant Charles W. Mapes, and lands on the Savage ranch, also now owned by the defendant Mapes. The Back Ditch has its head on the southerly bank of the Pioneer Ditch, in SE¼ of NW¼ of Section 17, in T. 19, N., R. 20, E., M.D.M., and thence runs in a southeasterly direction across the lands of the defendant Andrew Ghigleri and across the line between the Ghigleri ranch and the Alt ranch, at which line it crosses on a flume over the Jones

waste ditch and from there runs in an easterly and southerly direction over the lands of the defendant Mapes on the Alt and Savage ranches.

Originally and until changed by the defendant Charles Jones, a narrow swale was used as part of the Back Ditch for carrying the water therein for a distance of more than 800 feet before it reached the dividing line between the Ghigleri and Alt ranches, near said flume, and onto and over lands on the Alt ranch. In the year 1905 the defendant Charles Jones, placed a dam across this swale at a place about 800 feet above and northwesterly from said flume and with permission from M.J. Kiely, predecessor of the defendant Ghigleri, who then owned the land, dug a ditch along the northeasterly bank of said swale from said dam to said flume and from said dam to said flume changed said Back Ditch and the water flowing therein from said swale to said ditch so dug by said Jones. Ever since that ditch was so dug by said Jones it has been and now is, a part of the Back Ditch and as such has changed the water running therein during the irrigating season.

Defendants Charles W. Mapes and Andrew Ghigleri are, and they and their grantors for more than 60 years have been, the owners of the Back Ditch and are, and since its construction have been, the owners of said ditch so constructed by said Jones which was substituted for said swale as a part of said Back Ditch. As such owners the defendants Charles W. Mapes and Andrew Ghigleri are entitled and allowed to convey through the Back Ditch, as so changed by the defendant Jones, and over and across said flume and in said ditch as extended beyond and below said flume, such portions of the water which by this decree they are allowed to divert from the Truckee River through

the Pioneer Ditch as they deem necessary, not exceeding one inch per acre for the irrigation of those parts of their lands above described, which are under and subject to irrigation from the Back Ditch and not exceeding the amount of four acre feet per acre of water per annum.

Subject to, and without interference with the primary right of the defendants Andrew Ghigleri and Charles W. Mapes, to convey water from Pioneer Ditch throughout the Back Ditch for the irrigation of their lands lying thereunder as above provided, the defendants Charles Jones and Jane Jones, as a secondary right are entitled to convey through Back Ditch from the head thereof to said flume and to and through the Jones Waste Ditch and onto their lands above described and for the irrigation thereof, 40 inches of the water which as hereinbefore allowed, they are entitled to divert from the Truckee River through the Pioneer Ditch for the irrigation of their lands provided that they shall not divert from the river at any one time more water than sufficient to allow flows onto their lands aggregating 537 inches nor more than 2300 acre feet per annum for the irrigation of all their lands.

The defendants Charles Jones and Jane Jones are also entitled and allowed to use for the irrigation of their lands the waste waters coming from the Ghigleri ranch and from the lands above into the Jones waste ditch, which runs along the west side of the line between the Ghigleri and Alt ranches from the county road to and under the said flume and which a few rods southerly from said flume, turns and runs in an easterly direction to the lands of defendants Jones, provided that the flows of water used from the Pioneer Ditch and from waste water used by the defendants Charles Jones and Jane Jones for the

irrigation of their lands, shall not exceed in the aggregate 537 inches applied to the lands and that they shall not apply to the land more than 2758 acre feet per annum.

[Charts Omitted]

WASHOE LAKE RESERVOIR AND TRIBUTARIES

Washoe Lake Reservoir and Galena Creek Ditch Company Ditch

Originally the Washoe Lake Reservoir was established by a wooden dam, built across the outlet of Lower Washoe Lake in the year 1863 or 1864. This dam was superseded by a rock-concrete dam constructed in the year 1889. The wasteway or overflow of this concrete dam, as lowered 2 feet in 1890, is the same as the present spillway or overflow of the concrete dam. These dams were constructed in Section 24, over the outlet of Lower Washoe Lake, which outlet bears from the corner common to Section 13, 18, 19 and 24, on the east boundary of Township 17, south 81 degrees west, 59 chains distant, all in T. 17, N., R. 19, E. Mt. Diablo Base and Meridian, in Washoe County and State of Nevada.

The Washoe Lake Reservoir, as so made, comprises Washoe Lake and Lower Washoe Lake, connecting therewith the areas of lands comprising these lakes and the tule or swamp lands adjacent thereto, sufficient to throw back and store the waters in these lakes, upon these areas of lands to the heighth of high water mark of these lakes and to the height and capacity of said dam.

As early as the year 1864 the surplus and unappropriated waters flowing naturally into Washoe Lake and Lower Washoe Lake from the streams arising in the

mountains west and southwest of Washoe Valley and flowing therefrom across this valley and into these lakes, including the streams known as White Rock, Little Valley, Franktown and Ophir creeks, were appropriated and stored in Washoe Lake Reservoir and drawn therefrom during the irrigating seasons and used in the beneficial irrigation of crops growing on the lands of the hereinafter-named stockholders in the Washoe Lake Reservoir and Galena Creek Ditch Company and their predecessors.

In the year 1889 the Washoe Lake reservoir and Galena Creek Ditch Company was incorporated for the purposes of constructing and maintaining a ditch to divert water from Galena Creek, in Washoe County, to Lower Washoe Lake and there storing the water taken into and conveyed by this ditch for irrigation, stock, domestic and mechanical purposes. Thereupon, and with due diligence, the Washoe Lake Reservoir and Galena Creek Ditch Company constructed said concrete dam 2 feet higher than its present height and dimensions and constructed the proposed ditch from the head thereof, at a point on Galena Creek about one-quarter of a mile westerly from the center of Section 9 and across Brown's Creek at a place about one-eighth of a mile northerly from the center of Section 14, all in Township 17, N., R. 19, E., M.D.B. and M., and about seven miles in length, running in a southeasterly direction to the northwest end of Lower Washoe Lake in the northwest quarter of Section 24, in the last-named Township and Range, the lower terminus of said ditch, where it empties the water into the reservoir.

Thereupon, by and through this ditch, the Washoe Lake Reservoir and Galena Creek Ditch Company appropriated and conveyed to the reservoir 114 cubic feet per second of the surplus and unappropriated water of Galena

Creek and a like amount of the unused and unappropriated water of Brown's Creek and is allowed and is entitled, and since and including the year 1889 has been entitled, to so convey through said ditch, 114 cubic feet per second of the hitherto unappropriated waters of Galena Creek and a like amount of the not previously appropriated water of Brown's Creek to said reservoir and there store the same to the extent of keeping the same stored to the height of high water mark of these lakes and to the height and capacity of said dam, for drawing therefrom for irrigation, stock, domestic and mechanical purposes.

By reason of prior appropriation for a beneficial use the Washoe Lake Reservoir and Galena Creek Ditch Company and the hereinafter named stockholders of this corporation, for storage and for the irrigation of their hereinafter designated lands, are allowed and are entitled to have flow into Washoe Lake and Lower Washoe Lake and into said reservoir, sufficient to keep the same filled to the height of high water mark of said lakes and to the height and capacity of said dam, the waters flowing naturally into these lakes and into this reservoir from the streams arising in the mountains west and southwest of Washoe Valley, including the streams known as White Rock, Little Valley, Franktown and Ophir creeks, which had not been appropriated by other persons prior to May 25, 1889.

By reason of prior appropriation by said wooden dam the Washoe Lake Reservoir and Galena Creek Ditch Company and the parties to this action, who are the hereinafter named stockholders of this corporation, are allowed for storage and for the irrigation of their hereinafter described lands, and are entitled to have flow into Washoe Lake and Lower Washoe Lake and into said

reservoir, sufficient to keep the same filled to same capacity as made by wooden dam and to the height of high water mark of said lakes and the height and capacity of said dam, the waters naturally flowing into these lakes and into this reservoir from the streams arising from the mountains west and southwest of Washoe Valley, including White Rock, Little Valley, Franktown and Ophir creeks, which had not been appropriated prior to the year 1864.

Under permit granted by the State Engineer of the State of Nevada, dated June 3, 1913, on an application therefor filed in the State Engineer's office on November 19, 1912, Washoe Lake Reservoir and Galena Creek Ditch Company and its stockholders, hereinafter named, are entitled under priority of last-named date, to draw from Washoe Lake Reservoir after it reaches low water mark, through a ditch constructed for the purpose, 5,000 acre feet of water each year for the irrigation of 3,110 acres of land by this corporation and its stockholders.

The rights in Washoe Lake Reservoir are subject to the agreement between Theo. Winters, party of the first part, and I.H. Ball et al., parties of the second part, dated May 18, 1889, and recorded in the office of the County Recorder, Washoe County, B-275, which provides that all waters in the reservoir may pass through the flood gates and wasteways after the first day of July during each year, but preceding this date each year the second parties shall have the right to the use of all waters above the dam at the lower end of the reservoir and below the dam of the first party, which is above and near the southerly end of Little Washoe Lake.

The stockholders in Washoe Lake Reservoir and Galena Creek Ditch Company are entitled to receive and use, through Steamboat Creek and their various ditches leading therefrom, for the irrigation of their lands and for stock and domestic purposes, the water stored in or discharged from Washoe Lake Reservoir in proportion to the number that they hold respectively of the 200 shares of this corporation, as follows:

[Charts Omitted]

GENERAL PROVISIONS

In the foregoing table and columns pertaining to irrigation water rights the word, "Direct," means that the acreages specified thereunder are irrigated by water hereby allowed to be diverted from the river, creek or stream last named above the acreage; the word, "Drain," means that the acreages thereunder are irrigated by drain or waste water hereby allowed and ordered for the irrigation thereof; the word, "Season," means the time in any calendar year when irrigation may be needed; the word, "Priority," means the time when the water right was initiated. "Inch" means one-fortieth (1/40th) of one cubic foot per second, which, in general is the amount of water which will flow through an orifice having an area of one square inch, under a pressure of six (6) inches at the center of the opening. "Acre Foot," means the amount of water which will cover an area of one acre to a depth of one foot.

All of the above described ditches, lands and sections are in townships north and ranges east, Mount Diablo Base and Meridian. All of the irrigated lands are in the State of Nevada, except a part of the tracts listed under Dog, O'Neil, and Sunrise creeks. All of the ditches, canals and flumes are in the State of Nevada excepting the Farad

and the upper end of the Fleish. Lake Tahoe is partly in Nevada and partly in California and the outlet of the lake to the Truckee River and the dam controlling the storage in the lake are in the State of California.

Without the application of water thereto the above described lands are dry and arid and irrigation is necessary for the production of valuable crops thereon. The respective amounts of water hereinbefore stated to have been appropriated for or used on these lands, are in each instance as specified therefor necessary and sufficient for the reasonable and economical irrigation of crops thereon other than grain, potatoes, corn and beets. These do not need to be irrigated for so many months as alfalfa and pasture. Only two-thirds of the amount of water in acre feet hereinbefore specified or allowed for the irrigation of any of the above described tracts of land is necessary for, or should be or is allowed for the irrigation of grain grown thereon. Only four-fifths of the amount of water in acre feet designated above for the irrigation of said tracts of land is necessary for, or should be or is allowed for, the irrigation of potatoes, corn or beets grown thereon. Young alfalfa needs frequent irrigations for a long season. An additional amount of ten per cent of the quantity of water hereinbefore specified in acre feet for the irrigation of any of the above described lands is necessary for and should be and is allowed for the irrigation thereof during the first year that alfalfa is sown thereon, whether the alfalfa be sown with or without grain.

The amounts of water which the parties to this action have appropriated and used for purposes other than the irrigation as stated above are necessary and sufficient for the uses for which they have been appropriated.

The above named parties who so appropriated water for irrigation have also used and in addition thereto are entitled and allowed to use water for livestock and domestic purposes, but only in such amounts as may be necessary for watering stock and for domestic purposes; provided that the priority in respect of the use of water for livestock and domestic purposes of any person shall be identical with the priority of such party for irrigation.

IT IS FURTHER ORDERED AND DECREED that that certain agreement known as the Truckee River Agreement, dated July 1, 1935, entered into by the United States of America, party of the first part, Truckee-Carson Irrigation District, party of the second part, Washoe County Water Conservation District, party of the third part, Sierra Pacific Power Company, party of the fourth part, and such other users of the waters of the Truckee River as may have or shall become parties to said agreement by signing their names thereto, parties of the fifth part, which agreement provides (among other things) for the upstream storage of the waters of the Truckee River and its tributaries, be and the same is hereby approved, adopted by the Court and made a part of the decree and shall be binding as between the signatory parties to said agreement.

Water for irrigation is allowed to be used at any time, provided that the amount applied to the land during any calendar year shall not exceed the quantity in acre feet allowed to the land.

No owner of person or party entitled to the use of water under this decree shall be allowed to use for irrigation during any calendar month more than twenty-five per

cent of the quantity of direct water in acre feet hereby allowed for the land for the season.

If it shall appear at any time in regard to the actual use and need of water for irrigation that the amount hereinbefore estimated and allowed to be diverted from the river or stream into any ditch or canal is not sufficient after transportation loss to deliver to the land the flow allowed by this decree for application to the land, the allowance or flow as fixed by this decree for application to the land shall control, and there may, and hereby is allowed to be diverted from the stream a larger amount than the amount hereinbefore estimated for diversion from the stream, to the extent necessary to supply to the land, after actual transportation loss, the flow of water allowed by this decree for application to the land. Whether more or less than the amount hereinbefore estimated for diversion from the stream by any ditch, the quantity of water diverted for irrigation shall in every case be only such an amount as will supply to the land, after actual transportation loss, the amount of water allowed by this decree for application to the land and only the quantity needed for the irrigation thereof.

When any other user will thereby be deprived of any part of the water to which he is entitled, no ditch owner or user shall be allowed to divert away from the stream extra water for regulating the flow in any ditch.

The parties, persons, corporations, intervenors, grantees, successors in interest and substituted parties hereinbefore named, and their and each of their servants, agents, attorneys, assigns and all persons claiming by, through or under them and their successors, in or to the water rights or lands herein mentioned or described, are

and each of them is hereby forever enjoined and restrained from asserting or claiming any rights in or to the waters of the Truckee River or its tributaries, or the waters of any of the creeks or streams or other waters hereinbefore mentioned except the rights, specified, determined and allowed by this decree, and each and all of said parties, persons, corporations, intervenors, agents, attorneys, servants, assigns and successors in interest; and all persons claiming by, through or under them, are hereby perpetually restrained and enjoined from diverting, taking or interfering in any way with the waters of the Truckee River or its tributaries or with waters of any of the creeks or streams, or with any of the other waters hereinbefore mentioned, so as to in any manner prevent or interfere with the diversion, use and enjoyment of the waters of any of the other persons or parties as allowed or adjudicated by this decree, having due regard to the relative priorities herein set forth; and each of the said parties and persons and each of their agents, servants, attorneys and employees is hereby enjoined and restrained from ever taking diverting, using or claiming any of the water so decreed, in any manner or at any time so as to in any way interfere with the prior rights of any other persons or parties having prior rights under this decree, as herein set forth, until such persons or parties having prior rights have received for their several uses the waters hereby allowed and adjudged to them.

Except as herein specially provided no diversion of water into any ditch or canal, in this decree mentioned shall be permitted except in such amount as shall be actually, reasonably necessary for the economical and beneficial use for which the right of diversion is determined and established by this decree. The amounts of

water hereinbefore allowed are declared to be sufficient for the uses herein mentioned, and any and all use of water in excess of such decreed amounts is declared to be wasteful, and all wasteful or excessive use of water is hereby prohibited.

In any case where water is obtained from two or more sources, the aggregate amount of the combined waters from such sources which may be used, shall not exceed the amount required for such use as herein determined.

Whenever in this decree words of ownership are used in connection with any irrigated lands, such words shall not adjudicate, determine or affect any property rights therein, and this decree does not and shall not in any way determine the title to or rights in any property whatsoever, other than the rights to the diversion and use of water as herein determined and established. In the cases where, by this decree, water is allowed to be diverted through any ditch by the owner thereof for another party the conditions of any contractual relations existing between them are not hereby determined.

A Water Master shall be appointed by this Court to carry and enforce the provisions of this decree and the instructions and orders of the Court, and if any proper orders, rules or directions of such Water Master, made in accordance with and for the enforcement of this decree, are disobeyed or disregarded he is hereby empowered and authorized to cut off the water from the ditch or canal owners or water users so disobeying or disregarding such proper orders, rules or directions, and the Water Master shall promptly report to the Court his said action in such case and the circumstances connected therewith and leading thereto. Whenever the necessities of the situation

appear to the Court to so require, the Court shall authorize the employment by the Water Master of such person or persons to assist the Water Master as the Court may deem necessary to properly carry out the provisions of this decree and the orders of the Court. The terms of employment, expenses and compensation of said Water Master and his assistants, the payment thereof and the means and methods for securing funds with which to pay the same, shall be fixed by orders which the Court may hereafter from time to time make. The compensation and expenses of the Water Master and his assistants shall be borne by the parties whose rights are adjudicated by this decree in the following manner, to-wit: One-third by the United States, one-third by the Sierra Pacific Power Company, and the remaining one-third by the remaining persons or corporations whose rights are adjudicated by this decree. Any person feeling aggrieved by any action or order of the Water Master may in writing and under oath complain to the Court, after service of a copy of such complaint on the Water Master, and the Court shall promptly review such action or order and make such order as may be proper in the premises.

The owner or owners of each ditch or canal herein authorized to divert water from the Truckee River or any of its tributaries, or from any ditch or canal or other waterway receiving water therefrom, shall, within sixty (60) days after the entry of this decree, or such lesser time as may be fixed by the Water Master, install and thereafter at all times properly maintain in such ditch, canal or other waterway, a reliable, sufficient and easily-operated regulating headgate and locking and measuring devices, to be approved by the Water Master, whereby the water diverted into such ditch, canal or other waterway at any

and all times may be properly regulated and correctly measured.

The stored water of any reservoir, including Lake Tahoe, may be turned into and carried in the channel of any natural stream and mingled with the waters thereof and diverted therefrom for the proper uses of the persons or parties entitled thereto. The Water Master, upon timely notice, shall so regulate the headgates along the streams and do and direct to be done such other things as may be needful to transport such stored water and deliver the same to the person or persons entitled thereto. All persons are hereby prohibited from in any way interfering with any such stored water while the same is being legally carried to the persons or parties entitled thereto.

The quantities of water permissible to be diverted by the owners of the several ditches, through said ditches, on account of the several priorities herein decreed, are decreed subject to the obligations of said owners to divert and use water only at such times as needed and only in such amounts as may be required under a reasonable, economical and beneficial use. Rotation, or the combining and exchanging of the use of water between ditches and among users shall be permitted when necessary in order to obtain reasonable economy in the use of the water of the river or other streams, or in order to give to each ditch or user a more advantageous irrigation head, provided that such rotations shall not injuriously affect any of the rights determined and allowed by this decree. The Water Master may arrange for such rotations and consult with and endeavor to obtain the agreements of the various water users thereto, as the occasion may require and shall promptly report to this Court his action in the premises.

All users of water allowed by this decree a flow of less than one inch per acre for his, her or their respective lands may, with the consent of the Water Master or by his direction to the owners or person in charge of the ditch through which the water is conveyed, use when needed for the irrigation of his, her or their land, a larger flow than specifically allowed by this decree, up to and not exceeding one inch per acre, provided the amount of water used during any calendar year shall not exceed the seasonal acre feet allowance for the land, and that the flow allowed would not, if continuous, deliver in any one month in excess of twenty-five (25) per cent of the seasonal allowance in acre feet heretofore in this decree specifically allowed for said lands.

Whenever any person or party shall not be receiving the amount of water to which he is entitled under this Decree, the Water Master shall, upon request open, close, lock and regulate the necessary headgates, ditches and other works used for the diversion and application of such waters as to apportion the same as herein provided, and for that purpose may enter upon the lands of any and all persons having rights adjudicated by this Decree.

Persons whose rights are adjudicated hereby, their successors or assigns, shall be entitled to change, in the manner provided by law the point of diversion and the place, means, manner or purpose of use of the waters to which they are so entitled or of any part thereof, so far as they may do so without injury to the rights of other persons whose rights are fixed by this decree.

The State of Nevada is not a party to this suit but the rights of the State to water through different ditches which divert from the Truckee River for the State and

numerous parties to this action have been estimated for convenience and purposes of administration.

The several parties to this suit shall pay and bear their own costs.

Said Sierra Pacific Power Company is the identical party and corporation referred to herein and in the "Temporary Restraining Order" made and entered in said cause on February 13, 1926, as the "Truckee River General Electric Company, a corporation", the name of said corporation having been heretofore changed, pursuant to law, from the Truckee River General Electric Company to Sierra Pacific Power Company.

The foregoing adjudications set forth in Claims Numbers 1 to 744, inclusive, of this Decree are based upon conditions existing at or prior to the entry of said Temporary Restraining Order herein on February 13, 1926; and such adjudication shall not be deemed to limit, reestablish, or otherwise affect any rights acquired, created or lost subsequently thereto by conveyance, transfer, abandonment, non-user, contract (including said Truckee River Agreement) or otherwise, but the rights of the United States shall be as herein adjudicated as of the date of this decree save only as the same may be affected by said Truckee River Agreement.

Done in open court this 8th day of September, 1944.

FRANK H. NORCROSS,

District Judge.

APPENDIX 3

RENO, NEVADA
OFFICE OF
CLAUDE DUKE, WATER MASTER
CASE IN EQUITY, NO. A-3
U.S. DISTRICT COURT FOR NEVADA

TRUCKEE RIVER AGREEMENT

Approved as to form by
HAROLD L. ICKES
SECRETARY OF THE INTERIOR
United States of America

June 13, 1935

TRUCKEE RIVER AGREEMENT

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SUPPLEMENTAL RESERVOIR, [illegible] 4) PRIVATELY OWNED STORED WATER referred to in subparagraph (4) of Paragraph (A) of Article III of this Agreement: provided that DIVERTED FLOW shall not include: (1) released PRIVATELY OWNED STORED WATER (other than PRIVATELY OWNED STORED WATER referred to in subparagraph (4) of paragraph (A) of Article III hereof), (2) NATURAL FLOW in excess of FLORISTON RATES at ICELAND GAGE, (3) water diverted for the generation of electrical energy and other power, and/or for the removal of ice as provided in Paragraph (E) of Article III and Paragraph (B) of Article V hereof, which is returned to the Truckee River.

The amount of DIVERTED FLOW at any specified time shall be determined by adding: (1) the amounts of all waters diverted at such time from the Truckee River by conduits having their places of diversion in said River between ICELAND GAGE and Derby Dam (including Truckee Canal) and (2) the amount of water (if any) bypassed at Derby Dam in excess of irrigation requirements below said Derby Dam as provided in the TRUCKEE RIVER FINAL DECREE, and subtracting from the result of such addition the aggregate of: (1) the amount of water diverted at such time for the generation of electrical energy or other power, and/or for the removal of ice as mentioned in Paragraph (E) of Article III and Paragraph

(B) of Article V of this agreement, and which is returned to said River, (2) the NATURAL FLOW at ICELAND GAGE in excess of FLORISTON RATES, (3) the amount of PRIVATELY OWNED STORED WATER (other than PRIVATELY OWNED STORED WATER referred to in subparagraph (4) of Paragraph (a) of Article III hereof) diverted at such time by said conduits. The result shall be the amount of DIVERTED FLOW at such time. For the purpose of the foregoing computations all measurements of water shall be made in cubic feet per second.

(B) FLORISTON RATES means the rate of flow in the Truckee River at the head of the diversion penstock at Floriston, California (but measured at the ICELAND GAGE) consisting of an average flow of 500 cubic feet of water per second each day during the period commencing March 1 and ending September 30 of any YEAR, and an average flow of [illegible]00 cubic feet of water per second each day during the period commencing October 1 and ending the last day of the next following February of any year.

(C) ICELAND GAGE means a measuring device located on the Truckee River between the point of diversion of the penstock at Floriston, California, mentioned in the 1915 DECREE, and the point of confluence of Gray's Creek and the Truckee River, which gage is used to determine the rate of flow of water in the Truckee River at said point.

(D) MUNICIPAL AND DOMESTIC USES of water means the use of water, delivered through the mains of the distribution system of the Power Company, for municipal, domestic, sanitary, fire protection, lawn and residential garden irrigation, industrial and or all other

similar uses, exclusive, however, of use for the irrigation of farm areas.

(E) NATURAL FLOW means all water (including water flow contributing to Lake Tahoe) flowing in the Truckee River and its tributaries, exclusive of:

(1) water artificially impounded in Lake Tahoe, SUPPLEMENTAL RESERVOIR, or elsewhere, and released into said River, or its tributaries, and water diverted from any water shed (other than the Truckee River water shed) and released into said River, or its tributaries; and

(2) That portion of the flow in Hunter Creek actually diverted by the Power Company in accordance with, and for the uses provided in, the TRUCKEE RIVER FINAL DECREE.

Water diverted from the Truckee River and/or its tributaries for irrigation, domestic, municipal and/or livestock watering purposes which, after use, is returned through seepage or otherwise to said River shall, after its return to said River, be deemed part of the NATURAL FLOW thereof; provided, however, that the classification of water diverted for the generation of electrical [illegible]y or other power purposes shall not, after the return of such water to said River, be changed by reason of such diversion.

(F) 1915 DECREE means the judgment and decree entered in the District Court of the United States, in and for the Northern District of California, Second Division, on June 4, 1915, in the cause therein entitled "United States of America, plaintiff, v. The Truckee River General Electric Company (a corporation), defendant", numbered 14861, a copy of which judgment and decree is attached

hereto, marked "Exhibit [illegible] and by reference made a part hereof.

(G) OPERATIVE DATE OF THIS AGREEMENT is the date when all of the Articles of this agreement are effective, as provided in Paragraph (A) of Article XX.

(H) "Person" and "Persons" include individuals, partnerships, associations and/or corporations, both public and private.

(I) PONDAGE means facilities consisting of a reservoir or reservoirs created by a dam or dams and controlling works and other necessary equipment, constructed and installed for the purpose of regulating the flow of the Truckee River at ICELAND GAGE and of storing water of said River and/or its tributaries.

(J) PRIVATELY OWNED STORED WATER means water (not including water impounded in SUPPLEMENTAL RESERVOIR after its release into the Truckee River or its tributaries, or water stored in and/or now contributing to the water of Lake Tahoe, after its release into said River) impounded by any person under such conditions that the right to the use of such water shall be vested in such person, his successors or assigns.

(K) REDUCED FLORISTON RATES means rates of flow of water in the Truckee River, measured at the ICELAND GAGE, effective and in force during the period commencing November 1 and ending the next following March 31 of each YEAR, determined as follows, viz.:

(1) 350 cubic feet per second whenever the elevation of the water surface of Lake Tahoe is below 6226.0 feet above sea level and not below 6225.25 feet above sea level, and

(2) 300 cubic feet per second whenever the water surface elevation of Lake Tahoe is below 6225.25 feet above sea level.

(L) SUPPLEMENTAL RESERVOIR means facilities [illegible] the Little Truckee River consisting of a storage reservoir having a capacity of not less than 40,000 acre feet, for the [illegible] and control of water and the release thereof into the [illegible] Truckee River.

(M) (1) SUPPLEMENTAL STORAGE WATER means the first 25,000 acre feet of water (or, if, a lesser quantity be diverted and stored, then such lesser quantity) diverted and stored in SUPPLEMENTAL RESERVOIR during any year commencing October 1 and ending September 30 next following under the provisions of Paragraph (A) of Article IV of this agreement.

(M) (2) ADDITIONAL SUPPLEMENTAL STORAGE WATER means all water diverted and stored in SUPPLEMENTAL RESERVOIR in excess of SUPPLEMENTAL STORAGE WATER.

(N) TRUCKEE CANAL WATER means that part of the flow of the Truckee River, to the extent of 1500, cubic feet per second, decreed to the United States by the TRUCKEE RIVER FINAL DECREE for diversion into the Truckee Canal.

(O) TRUCKEE RIVER FINAL DECREE means the final decree which by Article X hereof the parties agree may be entered in said cause pending in the District Court of the United States in and for the District of Nevada, entitled "The United States of America, plaintiff, V. Orr Water Ditch Company, et al, defendants, in Equity No. A-3."

(P) YEAR means a period of twelve consecutive months beginning with the date first mentioned in each instance. The word "year" when not capitalized shall refer to the calendar year.

ARTICLE II. Construction, operation and ownership of PONDAGE and SUPPLEMENTAL RESERVOIR.

(A) Construction of PONDAGE.

The Power Company (subject to the terms of this agreement) agrees, at its own expense, after securing all necessary permits required by law, to acquire and/or construct in the channel of the Truckee River or Little Truckee River at a location to be selected by it between ICELAND GAGE and a point near Boca, California, PONDAGE having a storage capacity (computed without freeboard) of not less than 200 acre feet (if PONDAGE be in the channel) of the Truckee River), or of not less than 800 acre feet (if PONDAGE be in the channel of the Little Truckee River), with outlet control works having a discharge of not less than 500 cubic feet per second, for the purpose of storing and conserving water in Lake Tahoe, or other reservoirs, and water flowing in the Truckee River, by regulating the flow of said River when the flow thereof does not exceed FLORISTON RATES, so as to create a rate of flow at ICELAND GAGE which shall be uniform as nearly as practicable.

The Power Company shall, at its own expense, make and prosecute all applications for permits required by law for the acquisition and/or construction of PONDAGE. The Power Company further agrees (subject to the terms of

this agreement), to complete the construction of PONDAGE on or before March 1, 1936.

(B) Construction of SUPPLEMENTAL RESERVOIR.

The Conservation District agrees (subject to the terms of this agreement) that it will by or through an agreement or agreements with the United States, or otherwise, without expense to the Irrigation District or the Power Company, and after securing all permits required by law, cause to be constructed, on or before March 1, 1936, SUPPLEMENTAL RESERVOIR on the Little Truckee River near Boca, California, having a storage capacity of not less than 40,000 acre feet, with outlet control works having a discharge capacity of not less than 500 cubic feet per second under a static head of 30 feet, provided, however, that the Conservation District shall not be provided, however, that the Conservation District shall not be required, in order to construct SUPPLEMENTAL RESERVOIR, to obligate itself to the United States in an amount exceeding One Million Dollars, and if a reservoir with a capacity of 40,000 acre feet or more cannot be constructed for said sum or less, then in that event this agreement shall be null and void, unless otherwise agreed by the Truckee-Carson Irrigation District and the Washoe County Water Conservation District.

The making of an award by the United States of contract for such construction shall be conclusive evidence that SUPPLEMENTAL RESERVOIR can be constructed for such sum within the meaning of this paragraph (B). The Conservation District, shall, at its own expense make and prosecute, or cause to be made and prosecuted, all applications for permits required by law for the acquisition and/or construction of SUPPLEMENTAL RESERVOIR.

Nothing in this Paragraph (B) contained, however, shall operate to exempt any party hereto from the payment of any taxes or assessments lawfully levied or to be levied upon any property of such party, and such taxes and assessments shall not be deemed an expense within the meaning of this paragraph (B).

(C) Operation, Ownership and Maintenance of PONDAGE and SUPPLEMENTAL RESERVOIR.

(1) Operation of PONDAGE and SUPPLEMENTAL RESERVOIR.

From and after the OPERATIVE DATE OF THIS AGREEMENT PONDAGE shall be operated by the Power Company at its own expense for the accomplishment, in so far as practicable, of the purposes for which the same is to be constructed as stated in paragraph (A) of this Article II, subject to the limitations and conditions prescribed in this agreement. At all times during the period commencing April 1 and ending October 31 next following of any YEAR when the flow of the Truckee River at ICELAND GAGE shall not exceed FLORISTON RATES, PONDAGE shall be so operated as to maintain, in so far as practicable, uniform rate of flow in said River at ICELAND GAGE. During the period commencing November 1 and ending March 31 next following of any YEAR the Power Company may so operate PONDAGE as to fluctuate the flow of the Truckee River at ICELAND GAGE and/or at any other point selected by it, to such extent as it may deem desirable in connection with the operation in connection with the operation of its hydro-electric plants.

From and after the OPERATIVE DATE OF THIS AGREEMENT SUPPLEMENTAL RESERVOIR shall be operated by the Conservation District at its own expense,

subject to the limitations and conditions prescribed in this agreement.

The Power Company shall, at its own expense, make all repairs necessary in order to maintain PONDAGE in an efficient operating condition, and, similarly, the conservation District shall, at its own expense, make all repairs necessary in order to maintain SUPPLEMENTAL RESERVOIR in an efficient operating condition.

PONDAGE and SUPPLEMENTAL RESERVOIR shall be subject to the terms of this agreement, not only while owned by the Power Company and the Conservation District (as the case may be), but also while owned by their respective nominees and/or successors in interest.

(2) Ownership of PONDAGE and SUPPLEMENTAL RESERVOIR.

The ownership of PONDAGE shall be vested in the Power Company or other person, firm or corporation nominated or designated by it for that purpose, and no person, firm and/or corporation, other than the Power Company (and/or the person, firm or corporation so nominated or designated by it) shall acquire any ownership therein or claim of title thereto by reason of the execution of this agreement.

The ownership of said SUPPLEMENTAL RESERVOIR shall (unless vested in the United States by reason of the construction of said reservoir by the United States) be vested in the Conservation District or other person, firm or corporation named or designated by it for the purpose, and, unless said ownership is so vested in the United States, no person, firm and/or corporation other than the Conservation District (and/or the person, firm or

corporation so named or designated by it) shall acquire any ownership therein or claim to title thereto by reason of the execution of this agreement.

If PONDAGE and/or SUPPLEMENTAL RESERVOIR shall be acquired and/or owned by any nominee of the Power Company or the Conservation District (as the case may be) the Power Company or the Conservation District (as the case may be) will promptly cause such nominee (if not already a party hereto and bound hereby) to enter into an agreement with the other parties hereto that PONDAGE or SUPPLEMENTAL RESERVOIR (as the case may be) shall be operated under and subject to the terms of this agreement. If such nominee shall fail to promptly enter into such agreement with the other parties hereto, such nomination shall be ineffective for any purpose.

(D) Construction of Regulating Reservoirs.

(1) The Power Company agrees that in the event PONDAGE is acquired or constructed in the channel of the Little Truckee River, in accordance with Paragraph (a) of Article II, it will, at its own expense, after securing all necessary permits required by law, acquire and/or construct in the channel of the Truckee River at a location to be selected by it between Floriston, California and the intake of the Washoe Power Ditch in Nevada, a regulating reservoir having a capacity sufficient to regulate the flow of the Truckee river during any period commencing April 1st and ending October 31st of any YEAR, when the flow of said River does not exceed FLORISTON RATES. The Power Company further agrees to complete the construction of such regulating reservoir on or before March 1, 1936.

(2) From and after the OPERATIVE DATE OF THIS AGREEMENT, the Power Company agrees to operate such regulating reserevoir [sic] at its own expense during the period, commencing April 1st and ending October 31st of any YEAR, so that the daily fluctuations of the flow of said Truckee River at such point will not exceed six (6) per cent of said flow.

(3) The Power Company (subject to the terms of this agreement) shall be entitled also, at its option, to construct other regulating reservoirs at points in the channel of the Truckee River below Floriston, California, in addition to the regulating reservoir in subparagraph (1) of this Paragraph (D) referred to, and to operate all regulating reservoirs referred to in this Paragraph (D) during the period commencing November 1st and ending March 31st of any YEAR for the purpose of fluctuating the flow of the Trucrkee [sic] River in connection with the operation of its power plans.

ARTICLE III. Rates of flow in Truckee River.

(A) Maintenance of FLORISTON RATES AND REDUCED FLORISTON RATES.

(1) Except as otherwise provided in this agreement, all water in Lake Tahoe which is capable of being released into the Truckee River by the operation of the gates at the outlet thereof shall from and after the OPERATIVE DATE OF THIS AGREEMENT be released into said River as and to the extent required to maintain FLORISTON RATES or REDUCED FLORISTON RATES (whichever shall be in force) in accordance with the provisions of this agreement.

(2) Releases of water from Lake Tahoe and/or of water impounded in SUPPLEMENTAL RESERVOIR shall not (unless otherwise mutually agreed by the Conservation District, the Power Company and the Irrigation District) be made at any time at a rate which will cause a flow at ICELAND GAGE in excess of FLORISTON RATES or REDUCED FLORISTON RATES (whichever may then be in force), except as otherwise provided in this agreement.

(3) During the period commencing April 1 and ending October 31 next following of any YEAR FLORISTON RATES shall, at all time when possible, be maintained unless a temporary reduction thereof for part of the current irrigation season shall be mutually agreed to by the Power Company, the Conservation District and the Irrigation District. In the event that such temporary reduction in FLORISTON RATES shall be mutually agreed to by the Power Company, the Conservation District and the Irrigation District, the Power Company shall request the United States, and the Irrigation District, pursuant to the provisions of paragraphs (a) and (b) of Article Fifth of the 1915 DECREE, to reduce such flow in accordance with such agreement.

(4) Whenever FLORISTON RATES or REDUCED FLORISTON RATES, as the case may be, are being maintained in whole or in part by water from lake Tahoe and the Conservation District, the Power Company and/or the Irrigation District shall release into the Truckee River or its tributaries PRIVATELY OWNED STORED WATER for the purpose of maintaining, in whole or in part, FLORISTON RATES or REDUCED FLORISTON RATES (whichever shall be in force), and the Power Company shall, upon request of the party making such release, request the United States and the Irrigation

District, in accordance with the provisions of paragraph (a) and (b) of Article Fifth of the 1915 DECREE, to limit the draft from Lake Tahoe by an amount of water equivalent to the amount of such PRIVATELY OWNED STORED WATER so released, and the Irrigation District shall, after receiving such request from the Power Company, so operate the dam and controlling works at the outlet of said Lake as to reduce the draft from said Lake during the period of such release of PRIVATELY OWNED STORED WATER by an amount equivalent, so far as reasonably practicable, to the amount of such PRIVATELY OWNED STORED WATER so released, or, if it be impossible to reduce the draft from said Lake to the full amount of such PRIVATELY OWNED STORED WATER so released, then by the largest reduction of draft which it is possible to make; provided, however, that such PRIVATELY OWNED STORED WATER so released shall, to the extent of the amount of water by which the draft from Lake Tahoe was so reduced become DIVERTED FLOW.

(5) During the period commencing November 1 and ending March 31 next following of each YEAR (after the OPERATIVE DATE OF THIS AGREEMENT) whenever the water surface elevation of Lake Tahoe shall be higher than 6226.0 feet above sea level, FLORISTON RATES shall be in force and shall be maintained.

(B) Rates of flow at ICELAND GAGE when level of Lake Tahoe is below 6226.0 feet above sea level.

(1) During the period commencing November 1 and ending the next following March 31 of each YEAR after the OPERATIVE DATE OF THIS AGREEMENT, whenever the water surface elevation of Lake Tahoe shall be lower than 6226.0 feet above sea level REDUCED

FLORISTON RATES shall be in force and shall be maintained to the extent possible, subject to the applicable provisions of this agreement.

(2) During the period commencing November 1 and ending March 31 next following of any YEAR after the OPERATIVE DATE OF THIS AGREEMENT when REDUCED FLORISTON RATES are in effect, rates of flow in excess of or less than REDUCED FLORISTON RATES (but not to exceed FLORISTON RATES) may be maintained upon request of the Power Company to the United States and the Irrigation District and/or the Conservation District, who shall, in so far as practicable, make such releases of water from Lake Tahoe and/or of SUPPLEMENTAL STORAGE WATER impounded during the twelve months ending September 30 next preceding such period, and/or ADDITIONAL SUPPLEMENTAL STORAGE WATER released in accordance with the provisions of Paragraph (C) of this Article III, as are required to maintain such requested rates of flow; provided,

(a) That the total of such releases to maintain such requested rates of flow during such periods shall not on any specified date exceed by more than 6,000 acre feet the amount of water which would have been released from such sources between such specified date and the OPERATIVE DATE OF THIS AGREEMENT if the effective rates of flow in said river had been maintained to the extent possible as provided in this agreement;

(b) That the total of such releases to maintain such requested rates of flow during such periods shall not on any specified date be less, by more than 6,000 acre feet, than the amount of

water which would have been released from such sources between such specified date and the OPERATIVE DATE OF THIS AGREEMENT if the effective rates of flow in said River had been maintained to the extent possible as provided in this agreement;

(c) PRIVATELY OWNED STORED WATER may be released by the owner thereof in lieu of releases of water from Lake Tahoe and/or SUPPLEMENTAL RESERVOIR subject to the provisions of subparagraph (4) of Paragraph (A) of this Article III.

(d) All water released from SUPPLEMENTAL RESERVOIR UNDER the provisions of this paragraph (B) shall be subject to the provisions of subparagraph (5) of Paragraph (C) of this Article; and

(e) That the amounts of water released under the provisions of subparagraph (4) of this Paragraph (B) and of Paragraph (E) of this Article III shall not be included in the determination of the amounts of water released, as provided in this Paragraph (B).

(3) All reductions in FLORISTON RATES shall be effected pursuant to paragraph (a) and (b) of Article Fifth of the 1915 DECREE and/or by request of the Power Company to the Conservation District for releases of water from SUPPLEMENTAL RESERVOIR, in the manner following, to wit:

(a) For the purpose of effecting the reductions in FLORISTON RATES as provided in subparagraph (1) and (2) of this paragraph (B), the Power Company shall give notice to the United States and the Irrigation district as provided in paragraphs (a) and (b) of said

Article Fifth of the 1915 DECREE to so operate the dam and controlling works at the outlet of Lake Tahoe as to effect the reduction in flow below FLORISTON RATES required in order to carry out the provisions of this agreement; provided, however, that if the Power Company shall fail after the OPERATIVE DATE OF THIS AGREEMENT to give any notice required by the terms of this agreement, then this agreement shall be deemed for all purposes a notice by the Power Company to the United States and the Irrigation District in accordance with the provisions of said paragraphs (a) and (b) of Article Fifth of the 1915 DECREE to so operate said dam and controlling works as to fulfill the provisions of this agreement; For the purpose of effecting the rates of flow of the Truckee River at ICELAND GAGE as provided in subparagraphs (1) and (2) of this Paragraph (B), the Power Company shall request the Conservation District to release water from SUPPLEMENTAL RESERVOIR (subject to subparagraph (5) of Paragraph (C) of this Article III) at such rates of discharge as the Power Company may desire, limited, however, to an amount necessary to maintain FLORISTON RATES; provided, however, that if the Power Company shall fail, in the opinion of the Conservation District, to give such notice in time to allow the Conservation District to comply with the requirements of subparagraph (4) of Paragraph (C) of this Article III, then the right of the Power Company to make such request shall terminate for such YEAR, and the Conservation District shall, subject to subparagraph (5) of Paragraph (C) of this Article III,

release any SUPPLEMENTAL STORAGE WATER remaining in SUPPLEMENTAL RESERVOIR in accordance with subparagraph (4) of Paragraph (C) of this Article III.

(4) During the period commencing November 1 and ending March 31 next following of any YEAR, when REDUCED FLORISTON RATES are in effect, water from Lake Tahoe and/or SUPPLEMENTAL STORAGE WATER impounded during the twelve months ending September 30 next preceding such period, shall be released by the Irrigation District or the Conservation District (as the case may be) upon request of the Power Company in an amount up to (but not exceeding) 1500 acre feet, for the purpose of maintaining such rates of flow in excess of REDUCED FLORISTON RATES (but not in excess of FLORISTON RATES), as may be requested by the Power Company, provided the following conditions exist simultaneously:

(a) The electrical energy from the hydro-electric and other power plants of the Power Company combined with the electrical energy from other sources which it is then entitled to receive and is available is by reason of partial or complete breakdown, inadequate to meet the full load demand of the Power Company; and

(b) The Power Company is releasing at maximum possible rates of flow water (if any) stored for power purposes which it can and under the terms of this agreement may release for such purposes.

(C) Release of water from Lake Tahoe and of SUPPLEMENTAL STORAGE WATER for purpose of maintaining FLORISTON RATES and REDUCED FLORISTON RATES.

Unless the Conservation District, the Power Company and the Irrigation District agree otherwise, SUPPLEMENTAL STORAGE WATER and water from Lake Tahoe shall be released into the Truckee River to the extent possible or necessary, as follows, viz.:

(1) The Conservation District shall, during the period commencing April 1 and ending October 31 next following of any YEAR, upon request of the Power Company, release SUPPLEMENTAL STORAGE WATER in an amount up to but not exceeding 4000 acre feet during any such period, at such [illegible] and at such rates of FLOW as may be required for the purpose of regulating the flow of the Truckee River by the [illegible] of PONDAGE as provided in Paragraph (C) of Article II of this agreement; provided, however, that if FLORISTON RATES cannot be maintained at any time during such period with other water available for that purpose, then and in such event the said 4000 acre feet or any part thereof shall be used to maintain FLORISTON RATES to the extent possible or necessary.

(2) If the water surface elevation of Lake Tahoe at any time during the period commencing April 1 and ending October 31 next following of any YEAR shall be higher than 6225.5 feet above sea level, then and in that event (subject to the provisions of subparagraph (1) of this Paragraph (e), so long during said period as said elevation shall be higher than 6225.5 feet above sea level, drafts from Lake Tahoe shall be reduced to the maximum extent legally permissable [sic] and SUPPLEMENTAL STORAGE WATER shall be released, to the extent possible, in order to maintain FLORISTON RATES; provided that if such releases shall be insufficient to fully maintain FLORISTON RATES, the Irrigation District shall release

water from Lake Tahoe to the extent required, so far as reasonably practicable, to make up such deficit in FLORISTON RATES: and provided further that 4000 acre feet of SUPPLEMENTAL STORAGE WATER, subject to release under the provisions of this subparagraph (2), shall be retained in SUPPLEMENTAL RESERVOIR for the purpose provided for in subparagraph (1) of this Paragraph (C).

3. If the water surface elevation of Lake Tahoe at any time during the period commencing April 1 and endnig [sic] October 31 next following of any YEAR be 6225.5 feet above sea level, or lower, then and in that event (subject to the provisions of subparagraph (1) of this Paragraph (C), so long during said period as said elevation shall be 6225.5 feet above sea level or lower, water from Lake Tahoe shall be released, to the extent possible, to maintain FLORISTON RATES; provided that if such releases shall be insufficient to fully maintain FLORISTON RATES, the Conservation District shall release SUPPLEMENTAL STORAGE WATER to the amount required and ADDITIONAL SUPPLEMENTAL STORAGE WATER, subject to the provisions of Paragraph (C) of this Article III, to make up such deficit in FLORISTON RATES, or, if it be impossible to fully make up such deficit by such releases, then the Conservation District shall release into the Truckee River the largest amount of such water from SUPPLEMENTAL RESERVOIR which can be released.

(4) During the period commencing October 31 and ending March 1 next following of any YEAR all SUPPLEMENTAL STORAGE WATER impounded prior to the next preceding October 1, which shall remain in SUPPLEMENTAL RESERVOIR on October 31 of such YEAR shall

be released by the Conservation District into the Truckee River for the purpose of maintaining FLORISTON RATES or REDUCED FLORISTON RATES (whichever shall be in force at the time), subject, however, to the provisions of Paragraph (B), subparagraph (5) of Paragraph (C) and Paragraph (E) of this Article III.

SUPPLEMENTAL STORAGE WATER impounded during the period commencing October 1 and ending April 1 next following of any YEAR shall not be released during said period of such YEAR, except at the option of the Conservation District.

(D) Release of 4,000 acre feet of TRUCKEE CANAL WATER for power use.

The Power Company may at any time or times it deems it necessary or advisable so to do, release into the Truckee River during the period commencing October 1 and ending the last day of February next following of any YEAR all or any of the 4,000 acre feet of water referred to in Article VI hereof, notwithstanding such release may cause a flow in said River in excess of FLORISTON RATES or REDUCED FLORISTON RATES (whichever shall be then in force); provided, however, that such releases shall not result in a flow at the intake of the Truckee Canal in excess of the then safe carrying capacity of said Canal.

(E) Release of water for removal of ice.

(1) Whenever during the months of December, January and February of any YEAR there shall be need of an additional flow of water to enable the Power Company to remove ice interfering with the operation of its power plants, or any of them, the Irrigation District shall release

from Lake Tahoe such additional amount of water as shall be requested of the United States and the Irrigation District by the Power Company for that purpose; provided, however, that the Irrigation District shall not be required to release for said purpose more water than sufficient to maintain a flow, available for the generation of power at the Fleish Plant, in excess of the rate of flow then in force at ICELAND GAGE, and in no event shall the flow at ICELAND GAGE exceed 500 cubic feet per second.

(2) The Conservation District shall, upon request of the Power Company, release into the Truckee River, during said months of December, January and February of any YEAR SUPPLEMENTAL STORAGE WATER imponded prior to October 1 next preceding such release, for the purpose of removing ice; provided, however, that the Conservation District in any event shall not be required to release more water than sufficient to maintain a flow, available for the generation of power at the Fleish Plant, in excess of the rate of flow then in force at ICELAND GAGE, and in no event shall the flow at ICELAND GAGE exceed 500 cubic feet per second.

(F) Release of water from Lake Tahoe to prevent High water Damage.

The parties hereto agree that the Irrigation District shall [Illegible] operate the dam and controlling works at the outlet of Lake Tahoe as to prevent in sofar [sic] as practicable, the water surface of said lake from exceeding elevation, 6,229.1 feet above sea level. The procedure for regulating said lake to effect such result shall be as follows:

(1) Estimates of the maximum elevation which the water surface of Lake Tahoe would reach during the

current season shall be made on or about March 1 and April 1 of each year and at such other times as may be agreed upon, by the Irrigation District, Power Company and Conservation District, the estimated rise of the water surface elevation shall be based upon:

(a) The water content of the snow in Lake Tahoe Drainage Basin as determined by a joint snow survey of the Lake Tahoe area, which shall be made by the Irrigation District, Conservation District and Power Company on or about March 1st and April 1st of each year and at such other times as the said parties shall agree upon.

(b) The normal precipitation at Lake Tahoe between the date of such snow survey and the next following July 1st.

(c) The assumption that no water will be withdrawn through the outlet gates of Lake Tahoe after the date of such snow survey and prior to the date of the estimated maximum water surface elevation for the current calendar year.

(d) Existing physical and climactic conditions affecting the run-off into Lake Tahoe.

Provided, any snow survey data applicable and available from other reliable sources mutually satisfactory to the Irrigation District, Power Company and Conservation District, may [illegible] used in lieu of data which would otherwise be secured by [Illegible] said joint surveys. The expense of the joint snow surveys [Illegible] estimates shall be borne equally by the Irrigation District, the Power Company and the Conservation District.

(2) Whenever the estimated maximum water surface elevation of Lake Tahoe for the current calendar year, determined as provided in subparagraph (1) of this paragraph (F), higher than 6230.0 feet above sea level, and notwithstanding actual elevation of said lake at such time, the Irrigation District shall open the outlet gates of said lake and release at maximum rate of flow possible, or at such lesser rate of [illegible] as may be agreed upon by the Irrigation District, Conservation District and Power Company, an amount of water equivalent to the amount which it is estimated would be con[illegible] in said Lake above elevation 6230.0 feet above sea level. Whenever after such equivalent amount of water shall have been released, the actual water surface elevation of said [illegible] shall then be lower than 6228.0 feet above sea level, said [illegible] gates shall (unless otherwise agreed by the Power Company, Irrigation District and Conservation District) be closed by the Irrigation District, excepting only as may be required to maintain rates of flow provided for in this agreement.

(3) Whenever the water surface elevation of Lake Tahoe shall be higher than 6228.0 feet above sea level, the Irrigation District shall release from said Lake the maximum possible discharge therefrom (or such lesser rate of flow as may be agreed upon by the Irrigation District, the Conservation District and the Power Company) unless and until the last previous estimate of the maximum elevation of said water surface, as provided in subparagraph (1) of this paragraph (F), considered in conjunction with subsequent as well as anticipated withdrawals from said lake shall indicate that the maximum anticipated water surface elevation for the current calendar year will not exceed 6229.1 feet above sea level.

(4) The quantity of water which may be released from Lake Tahoe under the conditions specified in subparagraphs (2) and (3) of this paragraph (F) shall not exceed the quantity which the United States is entitled to release from said Lake under the provisions of the 1915 DECREE; provided, however, that in the event it shall be necessary, in order to accomplish the purpose contemplated in subparagraphs (2) and (3) of this paragraph (F), to release a greater quantity than the United States may be entitled to withdraw under said 1915 DECREE, the Power Company and the United States agree that they will thereupon immediately petition the court for a temporary order permitting such additional necessary withdrawal of water from said lake as shall be required to prevent, so far as reasonably practicable, high water damage to property legally entitled to protection from such damage; and the Irrigation District shall so operate the existing facilities as to effect as far as possible, the additional releases permitted or directed in any such court order if and when entered.

(G) Release of ADDITIONAL SUPPLEMENTAL STORAGE WATER.

During the period commencing April 1 and ending September 10 next following of any YEAR, (provided all SUPPLEMENTAL STORAGE WATER shall have been first released), ADDITIONAL SUPPLEMENTAL STORAGE WATER shall be released for the same purposes and under the same conditions specified in this Article III for the release and use of SUPPLEMENTAL STORAGE WATER.

During the period commencing September 11 and ending January 31, next following of any YEAR, (provided all

SUPPLEMENTAL STORAGE WATER impounded prior to October 1 of such year shall have been first released from SUPPLEMENTAL RESERVOIR), all ADDITIONAL SUPPLEMENTAL STORAGE WATER impounded prior to October 1 of such YEAR and remaining therein shall be released from SUPPLEMENTAL RESERVOIR, provided that the amount of water which would otherwise have been released from Lake Tahoe shall be reduced during such period by an amount equal, as nearly as practicable, to the amount of ADDITIONAL SUPPLEMENTAL STORAGE WATER so released during such period.

During the period commencing February 1 and ending March 31 next following of any YEAR, ADDITIONAL SUPPLEMENTAL STORAGE WATER impounded prior to the next preceding October 1 and remaining in SUPPLEMENTAL RESERVOIR may be released from or retained in SUPPLEMENTAL RESERVOIR at the option of the Conservation District. If the Conservation District shall elect to release such water in whole or in part, it will, insofar as may be reasonably practicable, so regulate such releases as to rates and periods of flow as to result in the greatest possible retention of water in Lake Tahoe.

ADDITIONAL SUPPLEMENTAL STORAGE WATER retained in SUPPLEMENTAL RESERVOIR after March 31 of any year shall retain its classification as ADDITIONAL SUPPLEMENTAL STORAGE WATER and only be released under the provision of this Paragraph (G) applicable to reuse of ADDITIONAL SUPPLEMENTAL STORAGE WATER.

ARTICLE IV. Impounding water in SUPPLEMENTAL RESERVOIR

(A) SUPPLEMENTAL STORAGE WATER.

The United States and the Irrigation District agree that the Conservation District shall have the right to impound SUPPLEMENTAL RESERVOIR during the period commencing October 1 and ending September 30 next following each YEAR after the OPERATIVE DATE OF THIS AGREEMENT, 25,000 acre feet of TRUCKEE CANAL WATER, subject, however, to the following conditions!

(1) Said TRUCKEE CANAL WATER shall be impounded under conditions which will not result in the NATURAL FLOW OF the Truckee River at ICELAND GAGE being reduced below FLORISTON RATES of flow, exclusive of releases from Lake Tahoe.

(2) The right to impound TRUCKEE CANAL WATER SUPPLEMENTAL RESERVOIR during any such period shall terminate (except as provided in paragraph (B) of this Article IV) when the amount of SUPPLEMENTAL STORAGE WATER impounded during such period and then in said reservoir, plus the amount of such water released from SUPPLEMENTAL RESERVOIR after March 31 of such period for the purpose of maintaining FLORISTON RATES, equals 25,[illegible] acre feet.

(B) ADDITIONAL SUPPLEMENTAL STORAGE WATER

It is further agreed by the United States, the Irrigation District and the Power Company that the Conservation District shall have the right after the OPERATIVE DATE OF THIS AGREEMENT to impound Truckee

Canal Water in SUPPLEMENTAL RESERVOIR up to the capacity of said reservoir, in addition to any such water impounded under the provisions of paragraph (1) and (2) of Paragraph (A) of this Article; provided that such additional TRUCKEE CANAL WATER may only be impounded when the impounding thereof will not reduce the water available for diversion by the Truckee Canal below the then existing carrying capacity of said Canal (limited, however, to the maximum diversion of 200 cubic feet per second at the intake of said canal).

(C)(1) GENERAL CONDITIONS

The Conservation District agrees that it will use every effort to so operate its SUPPLEMENTAL RESERVOIR as to permit the maximum possible diversion of TRUCKEE CANAL WATER by the Irrigation District in so far as, in the judgment of the Conservation District can be done without detriment to the impounding in SUPPLEMENTAL RESERVOIR of water which the Conservation District is entitled to impound therein under the terms of this agreement, or otherwise.

(2) If, during the period commencing October 1 and ending September 30 of the initial YEAR after the OPERATIVE DATE OF THIS AGREEMENT, (a) the amount of water impounded in SUPPLEMENTAL RESERVOIR exceeds 25,000 acre feet and includes any TRUCKEE CANAL WATER, and (b) a shortage of water for the irrigation of lands under Lahontan Reservoir exists or is imminent during such initial YEAR then such excess water (limited, however, to the amount of TRUCKEE CANAL WATER so impounded as hereinabove provided in this Paragraph (A), shall be released at such time or times

during said initial YEAR and at such rate or rates of flow, as may be requested by the irrigation District.

(3) The Conservation District agrees to operate SUPPLEMENTAL RESERVOIR at all times so as to effect the storage therein of the greatest quantity of water possible under the provisions of this agreement.

ARTICLE V. Diversion by Power Company from Truckee River into Highland Ditch and from Hunter Creek.

(A) Diversion by Power Company from Truckee River for MUNICIPAL AND DOMESTIC USES.

(1) The Power Company shall have the right after the OPERATIVE DATE OF THIS AGREEMENT to divert from DIVERTED FLOW to which the United States, the Irrigation District, the Conservation District and the parties of the fifth part herein are entitled, such quantity of water (after first utilizing therefor all the water allocated to the Power Company for MUNICIPAL AND DOMESTIC USES from the Truckee River and Hunter Creek under the TRUCKEE RIVER FINAL DECREE and the 1915 DECREE) as shall be necessary to supply the requirements for such uses in the City of Reno and the City of Sparks (including the suburbs of said cities and areas contiguous to, or near the same, but outside their respective legal boundaries, which are now or hereinafter may be served by the Power Company with water for such uses); provided, however, that the maximum amount of water which the Power Company shall be entitled to divert from the Truckee River for such uses under the foregoing provisions and the TRUCKEE RIVER FINAL DECREE and the 1915 DECREE shall not exceed

a flow of 40 cubic feet per second measured at the point or points of diversion from the Truckee River. Water for MUNICIPAL AND DOMESTIC USES shall be diverted by the Power Company under the following conditions only, to wit:

(a) All water diverted for MUNICIPAL AND DOMESTIC USES shall be chargeable to the portion of DIVERTED FLOW allocated to the Power Company and the Irrigation District by the provisions of subparagraph (1) of Paragraph (A) of Article VII hereof;

(b) Whenever the quantity of water diverted by the Power Company for MUNICIPAL AND DOMESTIC USES as provided in subdivision (a) of this subparagraph (1) is less than 40 cubic feet per second and is insufficient to fully meet the requirements of the Power Company for such uses, or such water (or any part thereof) is for any reason whatsoever not available for the diversion into the Highland Ditch, then and in either of such events, the Power Company shall be entitled to divert into said Highland Ditch from DIVERTED FLOW allocated to the Parties first mentioned in subparagraph (2) of Paragraph (A) of Article VII hereof a flow of water sufficient to supply such deficiency; and

(c) Whenever the quantity of water needed to meet the requirements of the Power Company for MUNICIPAL AND DOMESTIC USES referred to in this subparagraph (1) cannot be fully supplied from DIVERTED FLOW as provided in subdivisions (a) and (b) of this subparagraph (1), the Power

Company may divert from TRUCKEE CANAL WATER such amount of water as may be required to fully meet its requirements for MUNICIPAL AND DOMESTIC USES up to, but not exceeding 40 cubic feet per second.

(2) The Power Company agrees that after the OPERATIVE DATE OF THIS AGREEMENT that:

(a) Its right, as fixed by the TRUCKEE RIVER FINAL DECREE and this agreement, to divert water into the Highland Ditch for MUNICIPAL AND DOMESTIC USES shall be limited, as to the rights of the parties hereto as defined in the TRUCKEE RIVER FINAL DECREE and/or acquired under the terms of this agreement, to 40 cubic feet per second;

(b) It waives, as to the parties hereto only, any and all rights which it now possesses to divert into the Highland Ditch for MUNICIPAL AND DOMESTIC USES water released from Lake Tahoe into the Truckee River in excess of forty (40) cubic feet per second, subject, however, to the provisions of subparagraph (1) of this Paragraph (A); and

(c) It waives, as to the parties hereto only, any and all rights which it now possesses to use for irrigation water (other than NATURAL FLOW) released into the Truckee River from Lake Tahoe.

The waivers contained in the foregoing subdivisions (a), (b) and (c) of this subparagraph (2) are limited to rights of the Power Company only; and nothing in this subparagraph (2) contained shall be construed as a waiver,

or attempted waiver, by the Power Company of any of the rights of, or dedicated to, any irrigator under the Highland Ditch or of any person other than itself.

(B) Diversion into Highland Ditch to remove Ice.

The Power Company shall have the right to divert from the Truckee river into the Highland Ditch at any time or times during the months of December, January and February of any YEAR after the OPERATIVE DATE OF THIS AGREEMENT, any amount of water in said River, in addition to that hereinabove in this Article V mentioned, which is necessary for the purpose of removing ice from said Highland Ditch (but for no other purpose); provided that in the event of the exercise of such right, the Power Company shall immediately after such use return said water, or a like quantity thereof to said River.

(C) Diversion from Hunter Creek for MUNICIPAL AND DOMESTIC USES.

Notwithstanding anything to the contrary contained in this agreement, the Power Company shall have the right to divert water from Hunter Creek for MUNICIPAL AND DOMESTIC USES in the amounts and with the priorities provided in the TRUCKEE RIVER FINAL DECREE.

ARTICLE VI. 4,000 acre feet of TRUCKEE CANAL WATER for power use.

(A) Storage of 4,000 acre feet of TRUCKEE CANAL WATER by Power Company.

The Power Company shall have the right (to be exercised during the period commencing March 1 and ending August 1 of any YEAR after the OPERATIVE

DATE OF THIS AGREEMENT) to divert TRUCKEE CANAL WATER and store the same in any reservoir or reservoirs in the Truckee River Water Shed above ICELAND GAGE (exclusive of the Lake Tahoe Water Shed), with a priority junior to SUPPLEMENTAL STORAGE WATER, up to but not exceeding 4,000 acre feet (which water shall be in addition to the 40 second feet mentioned in Article V hereof), subject, however, to the following conditions:

(1) Said 4,000 acre feet of water may be diverted and impounded only from NATURAL FLOW in excess of FLORISTON RATES, exclusive of releases from Lake Tahoe;

(2) The diversion and storage of said 4,000 acre feet of water, or any part thereof, may be made only at such time or times and in such manner as not to interfere with the storage of SUPPLEMENTAL STORAGE WATER as provided for in Article IV hereof;

(3) If in any such YEAR the Power Company shall divert and store in any such reservoir or reservoirs, all or any part of said 4,000 acre feet of water, it shall, during the period commencing the 1st day of October next following such diversion and storing, and ending the last day of the next succeeding February, release into the Truckee River the amount of TRUCKEE CANAL WATER remaining in such reservoir or reservoirs, which was so diverted and stored during such YEAR;

(4) No diversion shall be made for the purpose of the initial storage of said 4,000 acre feet of water, or part thereof, in the event that the Irrigation District shall determine that the diversion and storage of said initial 4,000 acre feet, or part thereof,

will be detrimental to its Lahontan Reservoir water supply during the period commencing April 1 and ending October 31 of the YEAR, in which such initial storage is proposed to be made.

(5) The diversion and storage by the Power Company [illegible] said 4,000 acre feet of water or part thereof, in [illegible] YEAR after the diversion and storage of said [illegible] 4,000 acre feet, or part thereof, shall be subject [illegible] the condition that the Power Company may not impound in any year a quantity of TRUCKEE CANAL WATER in excess of the amount of water released during the next preceding YEAR in accordance with subparagraph (3) of this Paragraph (A), excepting only with the permission of the Irrigation District and in conformity with the conditions set forth in this subparagraph (5), and in subparagraph (6) of this Paragraph (A).

(6) If the Power Company shall have impounded in such reservoir or reservoirs PRIVATELY OWNED STORED WATER other than TRUCKEE CANAL WATER and shall have released the same into the Truckee River (for diversion into the Truckee Canal at rates of flow which will not result in a flow at the intake of said Canal in excess of its then safe carrying capacity) during the period commencing October 1 and ending the last day of the next following February of any YEAR, then and in that event the Power Company shall be entitled (without obtaining further permission of the Irrigation District and notwithstanding the provisions of subparagraph (5) of this Paragraph (A) to store during the period commencing March 1 and ending August 1 of the next succeeding YEAR in which such storage shall have been made, an amount of TRUCKEE CANAL

WATER (limited however to 4,000 acre feet) equivalent to the quantity so released; and

(7) The Power Company shall at all times exert its best endeavors to so operate its said reservoir or reservoirs as to permit the maximum possible diversion of TRUCKEE CANAL WATER by the Irrigation District, in so far as in the judgment of the Power Company such operation is practicable, without detriment to the impounding in said reservoir or reservoirs of water which the Power Company is entitled to impound therein under the agreement or otherwise.

(B) Release of 4,000 acre feet of TRUCKEE CANAL WATER.

Any TRUCKEE CANAL WATER diverted from the Truckee River and/or its tributaries after the OPERATIVE DATE OF THIS AGREEMENT and impounded by the Power Company pursuant to Paragraph (A) of this Article VI may (subject to subparagraph (4) of Paragraph (A) of Article III) be released into said River in lieu of drafts from Lake Tahoe and/or SUPPLEMENTAL STORAGE WATER, provided the Irrigation District, and the Power Company shall both consent to such release. In the event that the Irrigation District and the Power Company shall give such consent, the Power Company shall give the United Sates and the Irrigation District such notice relative to the reduction of flow below FLORISTON RATES of flow as may be deemed by it necessary to effect such reduction under the provisions of the 1915 DECREE.

(C) Power Company to obtain no right of Ownership to 4,000 acre feet of TRUCKEE CANAL WATER.

The Power Company shall acquire no right of ownership in or to the said 4,000 acre feet of TRUCKEE CANAL

WATER stored by it pursuant to Paragraph (A) of this Article VI, but the ownership thereof shall remain in the United States, provided, however, that said water shall be subject to the use in Paragraph (A) of this Article VI provided. The right to divert said 4,000 acre feet when released shall accrue only to the Irrigation District and the Power Compasy [sic], and said water when diverted by the Power Company shall be used for the generation of power only.

ARTICLE VII. Allocation of DIVERTED FLOW of Truckee River after OPERATIVE DATE OF THIS AGREEMENT

(A) Allocation.

All of the parties hereto agree that from and after the OPERATIVE DATE OF THIS AGREEMENT the rights to the use at all times of DIVERTED FLOW of the Truckee River shall, for the purposes of this agreement, be allocated:

(1) To the Irrigation District, for use upon the Carson and Truckee Divisions of the Newlands Reclamation Project, and (to the extent provided in subparagraph (1) of Paragraph (A) of Article V of this agreement) to the Power Company, and their respective successors in interest, on the one hand, and

(2) To the Conservation District and to the owners (as defined in the TRUCKEE RIVER FINAL DECREE), and their successors in interest, of rights to use water diverted from the Truckee River for use upon lands entitled to water under the provisions of the TRUCKEE RIVER FINAL DECREE, for irrigation, domestic and

stock watering purposes and located between ICELAND GAGE and Derby Dam (including use upon the additional lands referred to in Article VIII of this agreement), subject, however to the rights of the Power Company for MUNICIPAL AND DOMESTIC USES as provided in subdivision (b) of subparagraph (1) of Paragraph (A) of Article V of this Agreement, on the other hand, in the following manner, to wit: The right to the use of thirty-one (31) per cent of such DIVERTED FLOW is hereby allocated to the persons and for the uses provided in subparagraph (1) of this Paragraph (A), and the rights to the use of the remaining sixty-nine (69) per cent of such DIVERTED FLOW is hereby allocated to the persons and for the uses provided in subparagraph (2) of this Paragraph (A); provided, always, that at any time when the right to use any portion of the sixty-nine (69) per cent of DIVERTED FLOW is not being fully exercised for the uses provided in subparagraph (2) of this paragraph (A), and by reason of such fact there shall exist a flow of water available for diversion at Derby Dam in excess of the amount to which the Irrigation District is entitled at such time under the provisions of the TRUCKEE RIVER FINAL DECREE and/or this agreement, the Irrigation District shall have the right to divert and use such excess for its own purposes.

The Conservation District shall be entitled (subject to subdivision (b) of subparagraph (1) of Paragraph (A) of Article V hereof) to the use of all water included in said sixty-nine (69) per cent of DIVERTED FLOW referred to in subparagraph (2) of Paragraph (A) of this Article, which is in excess of the NATURAL FLOW therein.

The waters flowing in the Truckee River (other than NATURAL FLOW) to which the Conservation District

shall be entitled under the terms of this agreement shall be divided and allocated by it for the benefit of the lands within the Conservation District in the manner provided by law and this agreement.

(B) Priorities.

Whenever, in order to carry out and effect the allocation provided for in Paragraph (A) of this Article VII, it shall be necessary that any limitation be made upon the quantity of [illegible] which any of the parties may divert, such limitation [illegible] be made upon the quantities of water which the parties [illegible] the fifth part may divert and in the order of the priorities [illegible] said parties of the fifth part as such priorities are defined [illegible] the TRUCKEE RIVER FINAL DECREE, and in such case [illegible] quantity of water equal to the amount of such limitation [illegible] accrue and be applied to the uses of the Irrigation District and the Power Company, as provided in subparagraph [illegible] of Paragraph (A) of this Article VII.

ARTICLE VIII. Limitation of area irrigated within the Conservation District.

The parties hereto agree that the additional land upon which any portion of the sixty-nine (69) per cent of DIVERTED FLOW, as provided in subparagraph (2) of ARTICLE VII hereof and/or any PRIVATELY OWNED STORED WATER of the Conservation District, may be used, shall be limited to lands now or hereafter situate wholly within the boundaries of the Conservation District and contiguous to lands possessing rights to the use of water diverted from the Truckee River under the provisions of the TRUCKEE RIVER FINAL DECREE; provided, however,

that the total area of such additional lands shall not exceed five (5) per cent of the total area between ICELAND GAGE and Derby Dam entitled to the use of water of the Truckee River, as such area is defined in the TRUCKEE RIVER FINAL DECREE.

ARTICLE IX. Releases and diversions of PRIVATELY OWNED STORED WATER

Whenever after the OPERATIVE DATE OF THIS AGREEMENT, PRIVATELY OWNED STORED WATER belonging to or controlled by any of the parties hereto shall be released into the Truckee River or its tributaries, an amount of water equal to the amount so released shall be delivered to the point or points of diversion from said River designated by the party making such release as provided in the TRUCKEE RIVER FINAL DECREE; provided, however, that no deductions for transportation losses shall be made.

ARTICLE X. TRUCKEE RIVER FINAL DECREE

The parties hereto hereby consent and agree that after the OPERATIVE DATE OF THIS AGREEMENT a final decree may be entered by the District Court of the United States in and for the District of Nevada in said cause entitled, "United States of America, plaintiff, vs. Orr Water Ditch Company, defendant, In Equity No. A-3," embodying (among other appropriate provisions) the findings relative to the rights of the parties set forth in said Temporary Restraining Order in the Truckee River Adjudication Suit, modified, however, as provided in the stipulation hereinafter in this Article X mentioned. The parties hereto agree, simultaneously with the execution of

this agreement, to execute a stipulation in the form of stipulation annexed hereto, made a part hereof and marked Exhibit A consenting to the entry of such final decree when the conditions of said stipulation have been fulfilled.

When said stipulation shall have been signed as hereinabove provided in this Article X by the United States, the Irrigation District, the conservation District, the Power Company and by the parties of the fifth part herein who, under the provisions of said Temporary Restraining order are entitled to divert water from the Truckee River for the irrigation of lands within the Conservation District, whose diversion rights (computed in acre feet per annum) aggregate not less than seventy (70) per cent of the total diversion rights (similarly computed) within the Conservation District for irrigation from the Truckee River, or their successors in interest, said stipulation, together with two executed copies of this agreement shall forthwith be deposited with First National Bank of Reno, together with escrow instructions in substantially the form of the escrow instructions attached hereto and marked Exhibit B, signed by the parties hereto, or their duly authorized representatives. The parties of the fifth part, and each of them, hereby irrevocably authorize and direct the Conservation District to sign such instructions on their behalf and also to make the request hereinafter in this Article X mentioned for the entry of said final decree in said Truckee River Adjudication Suit.

When the notice, certificates and permits referred to in subparagraphs (1), (2), (3), (4) and (5) of Paragraph (B) of Article XX shall have been executed and issued, said notice, certificates and permits, or certified copies thereof, shall be filed with said Bank, and said Bank shall thereupon

(1) cause one of said duplicate copies of this agreement to be recorded in the office of the Recorder of Washoe County, State of Nevada, and (2) file with the United States District Court for the District of Nevada in said Truckee River Adjudication Suit the remaining executed duplicate copy of this agreement, together with said stipulation; and within thirty (30) days after the filing of said stipulation with said Clerk (or as soon thereafter as the engagements of said United States District Court will permit) the parties shall request said Court to enter a final decree in said Truckee River Adjudication Suit in accordance with said stipulation. When said duplicate executed copy of said agreement shall have been recorded, said copy shall be delivered to the United States, from which a certified copy will be obtained and placed in the custody of some proper person to be designated in writing by the Irrigation District, the Conservation District, and the Power Company, and shall be subject at all reasonable hours to the inspection of any party to this agreement. The custodian so designated may be changed from time to time by a writing signed by the Irrigation District, the Conservation District and the Power Company.

If said Court shall decline to enter final judgment in accordance with said stipulation in the form in which the same shall be so filed, and shall direct that in the entry of said decree any change shall be made in the provisions of said decree affecting the rights of any party to this agreement, then and in that event such change shall be forthwith submitted to the party or parties directly affected thereby, and if such party or parties, together with the United States, the Conservation District, the Irrigation District and the Power Company, shall approve such change, a supplemental stipulation amending said original

stipulation and signed by the United States, the Conservation District, the Irrigation District and the Power Company and by such other party or parties hereto as shall be directly affected by such change, shall be filed with said Court. the entry of a final decree embodying the terms of said original stipulation as modified by said supplemental stipulation shall for all purposes of this agreement have the same effect as herein provided in the case of the entry of a final decree in accordance with said original stipulation. In the event that owing to the absence of any party of the fifth part, or for any other reason, it shall be impracticable, in the judgment of the Conservation District, to give personal notice to any such party of any such proposed change under the provisions of this Article X, the Conservation District may cause to be published, at least once a week for two weeks, in a newspaper of general circulation published in the County of Washoe, State of Nevada, a notice of such proposed change, and such publication shall be deemed for all purposes the equivalent of actual notice to such party.

ARTICLE XI. Rights of the United States to use of water of Truckee River upon Pyramid Lake Indian Reservation Lands

Provision shall be made in the Truckee River final decree, for the rights of the United States to the use of water from the Truckee River for the irrigation of Indian lands within the Pyramid Lake Indian Reservation by inserting in the final decree the following language:

Claim No. 1 By order of the Commissioner of the General Land Office made on December 8, 1859, the lands comprising the Pyramid Lake Indian Reservation were withdrawn from the public domain for use and benefit of

the Indians and this withdrawal was confirmed by order of the President on March 23, 1874. Thereby and by implication and by relation as of the date of December 8, 1859, a reasonable amount of the water of the Truckee River, which belonged to the United States under the cession of territory by Mexico in 1848 and which was the only water available for the irrigation of these lands, became reserved for the needs of the Indians on the reservation.

For the irrigation of 3130 acres of Pyramid Lake Indian Reservation bottom lands, plaintiff, the United States of America, is entitled and allowed to divert from the Truckee River through the Indian Ditch, the intake of which is on the left bank of the river in Section 18, T. 22 N., R. 24 E., Mount Diablo Base and Meridian, not exceeding 58.7 cubic feet of water per second to an amount not exceeding 14,742 acre feet of water in any calendar year with a priority of December 8, 1859; provided the amount of water as to be diverted shall not exceed a flow of one miner's inch, or one-fortieth of one cubic foot per second per acre for the aggregate number of acres of this land being irrigated during any calendar year and the amount of water applied to the land after an estimated transportation loss of 15 percent, shall not exceed 85-100 of an inch or 85-100 of one-fortieth of one cubic foot per second for the total number of acres irrigated, and provided that the amount of water so diverted during any such year shall not exceed 4.71 acre feet per acre for the aggregate number of acres of this land being irrigated during that year, and further provided that the amount of water applied to the land shall not exceed four acre feet per acre for the aggregate number of acres of this land being irrigated during any calendar year.

This water is allowed for the United States and for the Indians belonging on said reservation and for their use and benfit [sic] and is not allowed for transfer by the United States to homesteaders, entrymen, settlers or others than the Indians in the event that said lands are released from the reservation or are thrown open to entry or other disposal than assignment or transfer to the Indians.

Claim No. 2. In addition to water for the above mentioned 3130 acres of Pyramid Lake Indian Reservation bottom lands, the Government is hereby and will be allowed to divert water from the Truckee River, with a priority of December 8, 1859, to the amount of one-fortieth of one cubic foot per second per acre for the irrigation of 2745 acres of Pyramid Lake Indian Reservation bench lands. The water so allowed for bench lands may be diverted from the Truckee River through the Truckee Canal or any other ditch now or hereafter constructed as the plaintiff may desire or authorize; provided that the amount of water for bench lands shall not exceed during any calendar year 5.59 acre feet per acre diverted from the river, nor exceed during any calendar year 4.1 acre feet per acre applied to the lands, for the aggregate number of acres of this land being irrigated during any year.

This water is allowed for the United States and for the Indians belonging on said reservation and for their use and benefit and is not allowed for transfer by the United States to homesteaders, entrymen, settlers or others than the Indians in the event that said lands are released from the reservation or are thrown open to entry or other disposal than assignment or transfer to the Indians.

ARTICLE XII. Withdrawal of protest against granting of Application Nos. 5169 and 6534 filed with California Division of Water Rights

On or before the OPERATIVE DATE OF THIS AGREEMENT the Irrigation District and the Power Company shall withdraw their protests filed with the California Division of Water Rights against the granting of Applications Nos. 5169 and 6534.

ARTICLE XIII. Recognition of right of Irrigation District to enlarge Truckee Canal to a capacity of 1200 cubic feet per second and to increase capacity of Lahontan Reservoir.

The Power Company, Conservation District and the parties of the fifth part, and each of them, waive all objections to the restoration and maintenance of the Truckee Canal by the Irrigation District and/or the United States to a carrying capacity of not exceeding 1200 cubic feet per second. The Power Company, Conservation District, and the parties of the fifth part, and each of them further waive any objection to the increase of the storage capacity of Lahontan Reservoir and agree that such increase of storage capacity thereof may be made by the Irrigation District. Nothing in this Article XIII contained shall operate as a waiver by the Conservation District of any rights it may have under Applications Numbers 5169 and 6534 filed with the California Division of Water Rights.

ARTICLE XIV. Excuses for non-performance and delay in performance.

No party hereto shall be liable for failure to perform, or for delay in performing, any condition or agreement hereinunder, if such failure shall be due to act of [illegible] war, earthquake, failure or refusal of the proper auth [illegible] to issue any permit, certificate, notice, order or document [illegible] issuance of which by law is or shall be a condition precedent to the performance of such condition or agreement, injunctions, court orders, writs, processes or judgments, or other cause or causes beyond the control of such party; and in the event that any such cause shall delay the performance of any condition or agreement (other than those mentioned in Paragraph (a) of Article XX hereof relating to the time within which this agreement shall become operative) which any party shall be obligated to perform, or cause to be performed, under the terms of this agreement, the time of such party to perform the same shall be extended for a period equal to the time during which such cause shall be operative.

ARTICLE XV. 1915 DECREE not to be affected by this agreement.

Nothing contained in this agreement is intended to modify, abrogate, alter or consent to the modification, abrogation or alteration of any of the terms and provisions of the 1915 DECREE; and all of the parties hereto, from and after the OPERATIVE DATE OF THIS AGREEMENT (but not prior thereto), confirm all the rights of the United States and the Power Company as defined and set forth in said DECREE. All of the parties hereto further stipulate and agree that the regulation and use of the waters of the Truckee River and its tributaries (including Lake Tahoe)

in accordance with this agreement shall not be construed as conflicting with any of the provisions of the 1915 DECREE. All of the parties hereto hereby covenant and agree that they will not, nor will any of them, claim or contend in any judicial or other proceeding or otherwise that the regulation or use of the waters of the Truckee River and its tributaries (including Lake Tahoe) as provided in this agreement is or will be inconsistent with or forbidden by any provision of the 1915 DECREE.

ARTICLE XVI. Agreement between United States and Irrigation District dated December 18, 1926, to remain in effect.

As between the United States and the Irrigation District none of the provisions of the contract entered into between the United States and the Irrigation District dated December 18, 1926, shall be deemed to have been in any wise altered, changed, modified or abrogated by the execution of this agreement; provided, however, that the United States and the Irrigation District hereby consent to all changes (if any there be) in the method of regulation and the manner of use of the waters of the Truckee River and its tributaries (including Lake Tahoe) and also to the construction and operation of certain reservoirs, made or provided for in this agreement; and the Irrigation District hereby waives all claims upon the United States on account thereof.

ARTICLE XVII. Provisions of this agreement not to limit or affect rights of Power Company to use of waters of Lake Tahoe and/or Truckee River for generation of electric power.

The parties hereto consent and agree (notwithstanding anything to the contrary contained in this agreement) that at all times after the OPERATIVE DATE OF THIS AGREEMENT the Power Company shall be entitled to use for the development of electric power and in meeting its contractual obligations to supply water to Crown Willamette Paper Company, a Delaware corporation (successor of Floriston Land and Power Company and Floriston Pulp and Paper Company), and its successors, under the contract dated November 2, 1908 between Truckee River General Electric Company, Floriston Land and Power Company and Floriston Pulp and Paper Company and recorded in the office of the County Recorder of the County of Nevada, State of California in Liber 108 of Deeds at page 630, any of the water flowing in the Truckee River (including PRIVATELY OWNED STORED WATER). The Power Company shall also have the exclusive right to divert for said purpose of developing electric power all SUPPLEMENTAL STORAGE WATER at any point or points in the Little Truckee River and/or the Truckee River between SUPPLEMENTAL RESERVOIR and ICELAND GAGE. Nothing contained in this agreement shall constitute a waiver or abandonment of any existing rights of the Power Company to the use of water released from Lake Tahoe and/or of water of the Truckee River for the development of electric power. PROVIDED, ALWAYS, HOWEVER, that water used by the Power Company for the development of electric power and water used by said Crown Willamette Paper Company, or its successors, for

the operation of its said mills and works shall be returned to the Truckee River immediately after such use.

ARTICLE XVIII. Provisions relative to the appointment of Water Administrator and to compilation of data.

(A) Appointment of Water Administrator.

If the Conservation District, the Irrigation District and the Power Company shall at any time hereafter deem it desirable that a Water Administrator be employed for the purpose of assisting in carrying out in the State of California the provisions of this agreement, said three parties, may, by an instrument in writing signed by them, employ such Administrator (who may, but shall not be required to be, the Water Master appointed under the provisions of the TRUCKEE RIVER FINAL DECREE), and shall define his duties, fix his compensation and prescribe the terms and conditions of his employment.

(B) Compilation of data.

The Water Master appointed under the provisions of the TRUCKEE RIVER FINAL DECREE shall be permitted by the parties hereto to have access at all reasonable hours to the records and data kept or acquired by them respectively in connection with their operations under this agreement, in order that said Water Master may compile such data and information as may be necessary or useful in connection with the allocation and distribution of water stored pursuant to the provisions of this agreement and with the flowage in the Truckee River and its tributaries.

ARTICLE XIX.
Method of giving notice or making request.

Any notice, request or permission herein provided to be given or made shall be given or made in writing and shall be either forwarded by United States mail or delivered to the party or parties to or for whom it shall be given or made, and copies or originals of all such notices, requests or permissions shall be promptly mailed or delivered to the United States, the Conservation District, the Irrigation District, the Power Company and the Water Master referred to in Paragraph (B) of Article XVIII, and, if any Water Administrator shall have been appointed pursuant to the provisions of Article XVIII hereof, then also to such Administrator.

ARTICLE XX. Provisions relative to time when and conditions under which agreement becomes operative.

(A) Time when Article I, Paragraphs (A) and (B) and subparagraph (1) of Paragraph (D) of Article II and Article XIV of this agreement become operative.

Upon this agreement and the stipulation for entry of final decree mentioned in Article X hereof being duly executed prior to December 31, 1936 (or if such time be extended in accordance with the provisions of this agreement, then within such extension) by the United States, the Irrigation District, the Conservation District, the Power Company and by parties of the fifth part herein who, under the provisions of the Temporary Restraining Order in said Truckee River Adjudication Suit are entitled to divert water from said River for the irrigation of lands within the Conservation District and whose diversion

rights (computed in acre feet per annum) aggregate not less than seventy (70) per cent of the total diversion rights (similarly computed) within the Conservation District for irrigation from the Truckee River, or by their successors in interest, the provisions of Article I, Paragraphs (A), (B) and sub-paragraph (1) of Paragraph (D) of Article II, Article XII, Article XIII and Article XIV of this agreement, and such provisions only shall immediately be and become effective and in operation.

(B) Time when remaining provisions of this agreement become operative.

This agreement shall become operative as to each and every remaining provisions thereof whether or not it be specifically recited in words or substance that such provisions shall be effective from and after the OPERATIVE DATE OF THIS AGREEMENT, and thereupon shall be and remain operative as to all of its provisions, upon and only upon the following conditions being complied with on or prior to March 1, 1938, (or if such time be extended in accordance with this agreement, then within such extension), to-wit:

(1) The Secretary of the Interior, of the United States shall have issued a certificate or notice stating that SUPPLEMENTAL RESERVOIR is available for the storage of water;

(2) The Department of Public Works of the State of California (or other officer, bureau or commission of the State of California exercising functions similar to those exercised by said Department) shall shall [sic] have issued its final permit approving the construction of the dam of the Conservation District at SUPPLEMENTAL RESERVOIR, if such permit be required by law;

(3) The Department of Public Works of the State of California, or the State Engineer of the State of California, or the State Engineer of the state of Nevada or the Chief Engineer of the Bureau of Reclamation of the United States (or other officer, bureau or commission exercising functions similar to those exercised by said Department or said Engineers, respectively) shall have issued a certificate that SUPPLEMENTAL RESERVOIR has been completed and has the capacity and conforms to the other conditions relating thereto specified in Paragraph (B) of Article II hereof;

(4) The Department of Public Works of the State of California (or other officer, bureau or commission of the State of California exercising functions similar to those exercised by said Department) shall have issued its final permit approving the construction of the dam at the PONDAGE reservoir of Power Company, if such permit be required by law; and

(5) The Department of Public Works of the State of California, or the State Engineer of the State of California, or the State Engineer of the State of Nevada, or the Chief Engineer of the Bureau of Reclamation of the United States (or other officer, bureau or commission exercising functions similar to those exercised by said Department or said Engineers, respectively) shall have issued a certificate that PONDAGE has been completed and conforms to the conditions relating thereto specified in Paragraph (A), and subparagraph (1) of Paragraph (D) of Article II hereof.

The date when all of said remaining provisions shall become effective as hereinabove provided is herein referred to as the OPERATIVE DATE OF THIS AGREEMENT.

The periods of time herein prescribed within which this agreement shall be executed and/or the notice, certificates and/or permits referred to in subparagraphs (1), (2), (3), (4) and (5) of this Paragraph (B) shall be executed and issued may be extended from time to time by a writing signed by the Irrigation District, the Conservation District and the Power Company; and in the event that the Conservation District or the Power Company (as the case may be) is actually engaged in prosecuting with due diligence the work of constructing SUPPLEMENTAL RESERVOIR or PONDAGE (as the case may be), such parties, respectively, shall be entitled of right to extensions of time for the completion thereof, effective so long as said work shall be so prosecuted.

PONDAGE shall be deemed to have been completed within the meaning of this agreement when the certificates and permit referred to in subparagraphs (4) and (5) of this Paragraph (B) shall have been issued.

SUPPLEMENTAL RESERVOIR shall be deemed to have been completed within the meaning of this agreement when the notice, certificates and permits referred to in subparagraphs (1), (2) and (3) of this Paragraph (B) shall have been issued.

If, on or before March 1, 1936 (or if such date be extended, then before the expiration of such extension) the conditions specified in subparagraphs (1), (2), (3), (4) and (5) of Pagagraph [sic] (B) of this Article XX shall not have been fulfilled, either the Irrigation District, the Conservation District or the Power Company (if not in default in the performance of its obligation hereunder) shall be entitled, at its option, to terminate this agreement by giving written notice of such termination to the other parties to this

agreement (exclusive of the parties of the fifth part) and in such case each of the parties hereto (including the parties of the fifth part) shall be restored to his rights and position as the same existed at the date hereof unaffected by any of the provisions of this agreement; provided, however, that nothing herein contained shall constitute or be deemed a waiver by any of the parties hereto of any right such party may have to recover damages from any party who shall have failed, without lawful excuse, to perform this agreement on its part, or to invoke such other remedy in relation thereto as it may deem advisable.

ARTICLE XXI. Provisions of Agreement to apply to and bind heirs, administrators, successors and assigns of parties.

The provisions of this agreement shall be binding upon the parties hereto (including the nominees referred to in Article II hereof), their heirs, administrators, successors and assigns, and whenever in this agreement reference is made to any of the parties hereto or to any such nominee, such reference shall include such party and nominee, his heirs, administrators, successors or assigns, unless the context shall indicate otherwise.

ARTICLE XXII. Obligation of parties to this agreement is several.

The obligation of the parties to this agreement is several, and not joint, and no party hereto shall be liable directly or indirectly for or in respect of any action taken or to be taken hereunder or for any money borrowed or to be borrowed or liability incurred or assumed, or to be incurred or assumed, by any other party hereto (including

any nominee referred to in Article II hereof) for the purpose of carrying out this agreement, or otherwise, but nothing in this Article contained, shall operate to exempt any party hereto from the payment of any taxes or assessments lawfully levied or to be levied on any property of such party.

ARTICLE XXIII. PRIVATELY OWNED STORED WATER.

Except as otherwise expressly provided in this agreement, PRIVATELY OWNED STORED WATER shall not be subject to the terms of this agreement; and wherever the terms "water" and/or "rate of flow" are used herein without words expressly indicating that such terms refer to or arise, either in whole or in part, from PRIVATELY OWNED STORED WATER, such reference shall be deemed not to include or refer to PRIVATELY OWNED STORED WATER.

ARTICLE XXIV. Rights of Non-Signers of Agreement not to be affected hereby.

Nothing herein contained shall be construed to limit the rights of any user of water of the Truckee River who shall not execute this agreement.

ARTICLE XXV. Miscellaneous.

(A) The parties hereto agree diligently and in good faith to cooperate with each other for the purpose of carrying out the provisions of this agreement, and to that end, the Irrigation District shall, so long as it shall be permitted to remain in control thereof, operate the gates and controlling works at the outlet of Lake Tahoe as

herein provided and prescribed, and the Conservation District and the Power Company, respectively, shall operate SUPPLEMENTAL RESERVOIR and PONDAGE in accordance with the provisions hereof, and all of the parties hereto shall in good faith perform all agreements, obligations and covenants herein assumed or agreed to be performed by them respectively.

The Irrigation District, the Conservation District and the Power Company shall each keep adequate records pertaining to their operations under this agreement and, upon request of any of said parties or the Water Master referred to in Paragraph (B) of Article XVIII hereof, such records shall be made available to the party making request therefor.

(B) Nothing contained in this agreement shall preclude any of the parties hereto from acquiring hereafter in the manner provided by law, rights to the use of water in addition to the rights now possessed by them respectively.

Nothing herein contained shall preclude any of the parties hereto from diverting water into the Truckee River Water Shed from another water shed, and the party so diverting the same shall have all of the rights in respect of water so diverted which are or may be provided by law.

(C) The parties hereto agree that in the event the Power Company should desire hereafter to change the place of diversion of water provided to be diverted for MUNICIPAL AND DOMESTIC USES by means of the Highland Ditch, it may make such change in the place of diversion; provided, however, that such changed place of diversion will not create a condition which will be detrimental to any of the rights of the other parties hereto under this agreement.

(D) Wherever the words "flow" or "rate of flow" are used in the agreement and the amount thereof is stated in cubic feet per second, such words shall mean rates of flow during each day equivalent to a constant and uniform flow at the rate stated.

(E) For the purpose of this agreement a depth of one foot in Lake Tahoe shall be assumed to have a capacity of 120,000 acre feet.

(F) For the purpose of this agreement, all elevations herein mentioned shall be determined by reference to that certain bench mark identified in the 1915 DECREE as the top surface of a hexagonal brass bolt ⅞" in diameter projecting 1" from the vertical face of the left hand or Southerly concrete abutment wall of the present existing Lake Tahoe dam, at approximately 3.2 feet below the top thereof and approximately in line, both horizontally and vertically, with the up-stream ends or "cutwaters" of the concrete piers between the sluiceways of said dam, which said bench mark shall be conclusively presumed to be 6230.00 feet above sea level.

(G) From and after the OPERATIVE DATE OF THIS AGREEMENT, all of the parties hereto agree as follows: (1) That the natural conditions obtaining on said date in the bed and banks of Lake Tahoe and of the Truckee River at and in the vicinity of the outlet of Lake Tahoe, above the dam that is at or near the point where said Lake empties into the Truckee River near Tahoe City, Placer County, California, shall not be disturbed or altered by any of the parties hereto without the approval of the Attorney General of the State of California; provided, however, that in the event that said conditions existing on said date shall alter or change for any cause or reason, then the

parties hereto respectively shall have the right to restore said conditions; (2) that they will not create nor cause to be created any outlet of said Lake in addition to the present natural outlet thereof; and (3) that they will not remove water from Lake Tahoe for Irrigation or power uses by any means other than gravity, except upon the condition that the Secretary of the Interior of the United States shall have first declared the same a necessity, and that they will not remove water from Lake Tahoe for sanitary or domestic uses by any means other than gravity, except upon condition that the Department of Health of the States of Nevada and California, or other officers exercising similar authority, shall first have made and filed with the Attorney General of the State of Nevada and the Attorney General State of California certificates showing that a necessity for the same exists.

ARTICLE XXVI. Execution of agreement in counterparts, etc.

This agreement and/or the stipulation referred to in Article I hereof may be executed in any number of counterparts, each of which shall for all purposes be decreed to be the original; and such counterparts singly or together shall constitute one and the same instrument. The Conservation District, the Irrigation District and the Power Company shall be entitled to affix to any duplicate executed copy or copies of said agreement the signature affixed to such counterparts, in order to facilitate the recordation thereof.

Any user of the waters of the Truckee River and/or its tributaries within the Conservation District, who shall not have become a party to this agreement by signing his

name hereto prior to the OPERATIVE DATE OF THIS AGREEMENT, may nevertheless become a party hereto and be entitled to the benefits hereof by thereafter signing this agreement provided the Conservation District shall consent thereto.

ARTICLE XXVII. Irrigation District contract authorized by election and confirmed by Court.

The execution of this contract shall be authorized by the qualified electors of the Irrigation District and Conservation District at elections held for that purpose. Thereafter without delay the two districts shall prosecute to decree proceedings in court for a judicial confirmation of the authorization of this contract. The United States shall not be bound in any way to proceed under the terms of this contract unless and until confirmatory final judgments of such proceeding shall have been rendered, including a final decision in any appeal presented therefrom. The two districts shall without delay furnish the United States for its files certified copies of all proceedings relating to the elections upon this contract and the confirmation proceedings in connection therewith.

ARTICLE XXVIII. Member of Congress Clause.

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. Nothing herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF; the parties hereto have executed this agreement, the day and year first above written.

UNITED STATES OF AMERICA,

By .....

Party of the First Part.

TRUCKEE-CARSON IRRIGATION DISTRICT,

By .....

By .....

Party of the Second Part.

WASHOE COUNTY WATER CONSERVATION DISTRICT,

By .....

By .....

Party of the Third Part.

SIERRA PACIFIC POWER COMPANY,

By .....

By .....

Party of the Fourth Part.

Owner	Water Right Area
_____	_____
_____	_____

EXHIBIT A.

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF NEVADA

THE UNITED STATES OF AMERICA, Plaintiff, vs. ORR WATER DITCH COMPANY, et al., Defendants.	IN EQUITY, DOCKET NO. A3

STIPULATIONS FOR ENTRY OF FINAL DECREE

WHEREAS the above entitled Court, after a full hearing of the parties, heretofore made and caused to be entered herein a temporary restraining order dated February 13, 1926, defining the rights of the parties to said cause in and to the waters of the Truckee River and restraining said parties from diverting or using water of said River except as therein provided, which order is now in force and is hereby referred to and made a part hereof;

AND WHEREAS, for the purpose of conserving the waters of Lake Tahoe and the Truckee River and its tributaries and for other purposes, the United States of America, Truckee-Carson Irrigation District, Washoe County Water Conservation District, Sierra Pacific Power Company and various other users of the waters of the Truckee River have entered into, or are about to enter into, an agreement (hereinafter referred to as the "Truckee River Agreement"), a copy of which agreement is annexed hereto and made a part hereof;

AND WHEREAS said Truckee River Agreement provides that a final decree shall be entered herein as provided in this stipulation, –

NOW, THEREFORE, in consideration of the execution of this stipulation by the undersigned, and of the mutual promises of the parties herein contained, IT IS HEREBY STIPULATED by and between the undersigned parties to said cause as follows:

1. That a final decree in substantially the form of the form of final decree annexed hereto and marked "Exhibit 1" and made a part hereof, may be entered herein.

2. That if said Court shall decline to enter final judgment herein in the form of the decree attached hereto and marked "Exhibit 1", and shall direct that in the entry of said decree any change shall be made in the provisions of said decree directly affecting the rights of any signer of this stipulation, then and in that event such change shall be forthwith submitted to the party or parties directly affected thereby, and if such party or parties, together with the United States of America, the Truckee-Carson Irrigation District, the Washoe County Water Conservation District and the Sierra Pacific Power Company shall approve such change a supplemental stipulation amending said original stipulation and signed by the United States, the Truckee-Carson Irrigation District, the Washoe County Water Conservation District and the Sierra Pacific Power Company and by such other party or parties hereto who shall be directly affected by such change shall be filed with said Court.

3. In view of the fact that this stipulation is the basis of other action being taken by certain of the parties to said Truckee River Agreement as therein provided, It is understood and agreed that no signer of this stipulation shall withdraw his signature thereto, and the execution of this stipulation shall be irrevocable.

4. This stipulation shall not be effective for any purpose unless and until the same shall have been filed in said Court as provided in said Truckee River Agreement, but upon being so filed the same shall be effective in accordance with its terms.

Dated: _____, 1935.

Name of Party	Attorney for Party
_____	_____
_____	_____

EXHIBIT B

_____, 1935.

First National Bank in Reno,
Reno, Nevada.

Dear Sirs:

The undersigned hand you herewith:

(A) Stipulation for the entry of a final decree in the cause pending in the United States District Court for the District of Nevada entitled "The United States of America, plaintiff, v. Orr Water Ditch Company, et al, defendants", and numbered, In Equity No. A-3 in the records of said Court (which cause is herein referred to as the "Truckee River Adjudication Suit");

(B) Two duplicate executed copies of agreement dated _____, 1935, between United States of America, party of the first part, Truckee-Carson Irrigation District, party of the second part, Washoe County Water Conservation District, party of the third part, Sierra Pacific Power Company, party of the fourth part, and certain other users of the waters of the Truckee

River and/or its tributaries, parties of the fifth part (said agreement being hereinafter referred to as the "Truckee River Agreement").

You are hereby instructed as follows:

1. To retain in your possession said stipulation and duplicate agreements until the following additional documents, or certified copies thereof, shall have been filed with you (provided that the same shall be filed with you on or prior to March 1, 1936 or within any extension of said date), to-wit:

(a) Notice or certificate of the Secretary of the Interior of the United States stating that SUPPLEMENTAL RESERVOIR described in Paragraph (B) of Article II of said Truckee River Agreement is available for the storage of water;

(b) Final permit of the Department of Public Works of the State of California (or other office, bureau or commission of said State exercising functions similar to those exercised by said Department) approving the construction of the dam of the Conservation District at said SUPPLEMENTAL RESERVOIR (if such permit be required by law);

(c) Certificate of the Department of Public Works, or the State Engineer of the State California, or the State Engineer of the State of Nevada, or of the Chief Engineer of the Bureau of Reclamation of the United States (or other officer, bureau, or commission exercising functions similar to those exercised by said Department or said Engineers respectively) showing that said SUPPLEMENTAL RESERVOIR has been completed and has the capacity and conforms to the other conditions relating

thereto specified by Paragraph (B) of Article II of said Truckee River Agreement;

(d) Final Permit of the Department of Public Works of the State of California (or other officer, bureau, or commission of said state exercising functions similar to those exercised by said Department) approving the construction of the dam at the PONDAGE reservoir of the Power Company described in Paragraph (A) of Article II of said Truckee River Agreement (if such permit be required by law); and

(e) Certificate of the Department of Public Works or the State Engineer of the State of California, or the State Engineer of the State of Nevada, or the Chief Engineer of the Bureau of Reclamation of the United States (or other officer, bureau or commission exercising functions similar to those exercised by said department or said Engineers, respectively) showing that PONDAGE has been completed in accordance with the conditions relating thereto specified in Paragraph (A) of Article II of said Truckee River Agreement.

2. If and when all of said documents specified in paragraph (1) hereof have been filed with you prior to March 1, 1936 (or such later date to which the time for filing the case may be extended) you shall:

(a) deliver one duplicate executed copy of said Truckee River Agreement to the County Recorder of the County of Washoe, State of Nevada, for recordation, and

(b) deliver to and file with the Clerk of the United States District Court for the District of Nevada in said Truckee River Adjudication Suit the remaining executed copy of said Truckee River Agreement, together

with said stipulation and said documents referred to in subparagraph (a), (b), (c), (d) and (e) hereof.

3. If said documents referred to in said subparagraphs (a), (b), (c), (d) and (e) of Paragraph 1 hereof shall [illegible] be filed with you within the time hereinabove specified [illegible] any extension thereof), you shall promptly return to the undersigned Truckee-Carson Irrigation District, Washoe County Water Conservation District and Sierra Pacific Power Company all of the documents hereinabove referred to [illegible]ceipt for said papers signed by the attorneys for said Truckee-Carson Irrigation District, Washoe County Water Conservation District and Sierra Pacific Power Company shall constitute a sufficient acquittance to you therefor.

You may accept a written opinion signed by the attorney for Washoe County Water Conservation District, Truckee-Carson Irrigation District and Sierra Pacific Power Company as conclusive evidence that the time for the filing with you of any of said documents referred to in said subparagraphs (a), (b), (c), (d) and (e) has or has not been extended and if so, as to the date to which the same has been extended and also as to whether or not any of said notices, permits andcertificates referred to in subparagraphs (b) and (d) as required by law, and also as to whether any of the [illegible]ing notices, permits and certificates, are, or are not, in due form and properly executed, or as to any other matter arising under these escrow instructions.

Yours very truly,

TRUCKEE-CARSON IRRIGATION DISTRICT,

By _____

By _____

WASHOE COUNTY WATER CONSERVATION DISTRICT,

By _____

By _____

SIERRA PACIFIC POWER COMPANY,

By _____

By _____

By _____

By _____

APPENDIX 4

GAI:EW

DEPARTMENT OF JUSTICE

WASHINGTON D.C.

May 24, 1934.

MEMORANDUM FOR MR. BLAIR

Re: Consent decree in United States v. Gila Valley Irrigation District, et al.

This suit was brought in 1925 in the United States District Court for the District of Arizona to adjudicate and quiet the rights of the United States to the use of water from Gila River for the irrigation of Indian lands and lands in what is known as the San Carlos Irrigation Project in Arizona. It was filed about a year after the taking effect of the Act of Congress of June 7, 1924, entitled "An Act for the continuance of construction work on the San Carlos Federal Irrigation Project in Arizona, and for other purposes." (43 Stat. 475), which authorized the Secretary of the Interior, through the Indian Service, "to construct a dam across the canyon of the Gila River near San Carlos, Arizona, as a part of the San Carlos Irrigation Project, as contemplated in the report of the Chief Engineer of the Indian Irrigation Service submitted to the Commissioner of Indian Affairs on November 1, 1915, at a limited cost of $5,500,000, for the purpose, first, of providing water for the irrigation of lands allotted to Pima Indians on the Gila River Reservation, Arizona, now without an adequate supply of water, and second, for the irrigation of such other lands in public or private ownership, as in the opinion of the said Secretary, can be served by water impounded by said dam without diminishing the

supply necessary for said Indian lands; provided that the total cost of the project shall be distributed equally per acre among the lands in Indian ownership and the lands in public or private ownership that can be served from the waters impounded from said dam."

This impounding dam was completed early in 1932 and has a storage capacity of 1,285,000 acre feet of water. It occupies a portion of the San Carlos Indian Reservation in the eastern part of Arizona and was established in 1872 by Executive Order for the benefit of the Apache Indians, numbering at that time about 2,000. Farther down the Gila River and within 40 or 50 miles of the City of Phoenix is the Gila River Indian Reservation, which was established in 1859 on behalf of the Pima Indians, numbering at that time about 5000. Commencing a few miles up the Gila River from the San Carlos or Coolidge Reservoir and extending on through what is known as Safford Valley, and beyond that the Duncan Valley, in Arizona and New Mexico, are located a number of towns and villages inhabited by farmers and horticulturists, whose predecessors were pioneers from neighboring territories, principally from Utah, and who, in early days, made their homes here where nature appeared to offer many advantages and opportunities for the creating of a thrifty community life. These pioneers began immediately taking out water from the Gila for the irrigation of crops along its course, and their successors have continued increasingly to put the water to service until today there are in these valleys something like 40,000 acres of cultivated land under irrigation from this stream.

There are numerous rights to the use of water from Gila River aside from those asserted by the Upper Valleys

people. These, however, come below the San Carlos Reservoir and do not present the difficulties of those above. Had it not been for the apparent menace to the rights of the Government on behalf of its Indian wards by the assertion of vested rights in the Upper Valleys people regardless of claimed priorities under and by virtue of the implication of rights arising from the establishment of the Gila River Indian Reservation, this suit would not have been brought. I will venture the assertion, also, that if the relationship of the Upper Valleys users to the stream had been understood or appreciated as well as it is today, this suit would not have been brought. The original Bill of Complaint shown evidence of having been prepared hastily and without proper consideration either as to geographical areas or with any purpose of descriminating [sic] between rights of recognized standing and those apparently in conflict with the interests of the Government.

In 1928 the Bill of Complaint was amended and the limits of litigation cut down and the allegations regarding the Government's rights were more definitely set forth. At that time some parties, deemed unnecessary originally, were left out, but other parties deemed necessary to a complete adjudication were added. It has been somewhat difficult to keep within reasonably necessary bounds both as to parties and geographical extent. It was determined sometime after the amended bill was filed and after careful consideration, that quite a number of parties located on tributaries of the Gila, notably the San Francisco River, were not necessary to the adjudication of the Government's rights. There had also been made parties a large number of persons who had entered into contracts with the Government for the use of water from the San Carlos Project. These rights were in no sense in conflict

with the Government's right so far as the project was concerned. There is in this case not presented a conflict of rights as to diversions from the stream itself, that is from ordinary stream flow. The Government had two purposes in view in constructing the San Carlos Reservoir, namely: First, to take care of the rights of the Indians located on the Indian reservations, especially the Pimas on the Gila River Reservation; and, second, to develop the area below the reservoir and above the Gila Indian Reservation, which promised successful development for the use of white landowners.

The project provided for by the Act of Congress of 1924 contemplated storage of flood waters which, the records of many previous years had shown, were – because of being uncontrolled – wasted into the Colorado River and the Pacific Ocean. It was, in other words, a flood water venture. Natural stream flow, if any such can be said to exist in the Gila River, is and has been of such negligible character as to amount, that it could not have been in the mind of Congress except as a purely incidental element. The record shows that floods of enormous proportions have come down the Gila River in years past, sometimes carrying destruction to land on either side. The reservoir is of such capacity as to stop these floods in their course and hold them back for beneficial distribution on lands below. This, presumably, will take care of the Indian lands more beneficially than uncertain stream flow would have done and, in addition, provides for the development of an otherwise barren area of desert land. The interests of the Upper Valleys people, it cannot reasonably be presumed, were ignored by Congress in the launching of this project. While they could not possibly be affected directly by the construction of the reservoir below their land, and had no

occasion to question any right to deal with the waters of the stream below them, they were confronted immediately upon the inauguration of the project with the demand that they pay the Government for the water rights which they had used throughout the years. They were informed that as the Gila River Indian Reservation had been established many years before the settlers in the Upper Valleys came into the country, their rights were secondary and inferior to the Indian rights; that in the year 1859, when the Indian reservation was established, the United States had reserved, under the doctrine later announced in *Winters v. United States*, 207 U.S. 564, and the extension of that doctrine in *Conrad Investment Company v. United States,* 161 Fed. 829, all of the waters of the Gila River necessary, presently or prospectively, for the development of the Indians.

The principle established by the Winters case, namely, that "The power of the Government to reserve the waters and exempt them from appropriation under state laws is not denied and could not be" and that upon the organization of an Indian reservation the Government reserves all water rights which may be necessary then and thereafter, is present in all suits between the United States on the one hand, and private proprietors on the other, where Indian reservations are involved. It gives rise immediately to the question of priorities, which is undoubtedly the most important question with which the courts have to deal in matters of this character. In my opinion, this principle need not be asserted by the Government in the instant case to the extent of preventing the Upper Valleys settlers from using the water upon their lands as heretofore and as at present employed thereon. As a practical matter, the capacity of the San Carlos

Reservoir will not be affected to any appreciable extent if the upper communities are allowed to go on as they have in the past.

The Gila River is a peculiar stream. I have had occasion at various times to observe, personally, some of its peculiarities. It is a stream of unusual fluctuations, varying from occasional floods of tremendous proportions to no flow at all except such as returns after use by irrigation. A large part of the water used by these farming communities returns to the stream and finds it way along the natural bed to the reservoir. There is necessarily some loss by reason of evaporation and to some extent by percolation and by plant use, but the return flow is unusually heavy along the particular segment of the river through these valleys and to the reservoir. My opinion that as a practical matter the continued use of water by them as heretofore would not appreciably affect storage by the Government in the reservoir, is based upon personal experience in relation to this stream, as well as the statements of people of a longer familiarity with physical conditions at this point. With this in mind, and also with the idea that under the facts as they presented themselves, the litigants should not be required to carry any longer the burdens of protracted litigation, I suggested sometime in 1931, I believe, the advisability of the Government's attempting to have the suit dismissed. This did not meet with favor on the part of officials of the Department of the Interior and the litigation continued. Soon, however, the thought took form that the parties might agree upon some common ground for the adoption of a consent decree. In the meantime a Special Master had been appointed to take testimony and some proof was submitted. This consisted mostly of documentary evidence

and had no immediate connection with any of the multitude of rights involved in the suit. The Department's Special Assistant in the field was instructed to negotiate with parties on the other side, it having been first ascertained that there was a readiness on their part to endeavor to reach common understandings. Negotiations were carried on by representatives of the various parties and it was finally found that the principles to be used as a basis for a decree had been agreed upon. It was tentatively understood that the Upper Valleys users were to have their rights determined upon what was, for convenience, designated "the substituted storage plan", by which they were to recognize the Government priorities and to pay the Government a consideration based upon acreage for the right to use water for beneficial purposes. However, when the negotiations were in progress, the depression came and this discouraged the idea of incurring obligations on the part of the upper communities of any substantial amount. The substituted storage plan as then considered would have meant the payment over a number of years of something over $400,000. This was considered by some of the more practical farmers as being distinctly favorable, as it would remove what to them was the menace of the Government's reserved right with priorities ahead of their own in relation to the stream flow, but it failed to carry when submitted to the body of the people making up the communities affected.

Further consideration by representatives of the government in the field, led to the making of a somewhat different proposition which, having been submitted to the Upper Valleys people, was accepted. It is still a substituted storage plan but takes care of the money consideration originally submitted and in a way it appears to be

satisfactory to all parties concerned. A decree was drafted in 1932 which purported to fix and define in harmony with understandings that had been reached, all rights involved in litigation and provided for machinery for the administration of the decree. It required a tremendous amount of research work with almost infinite detail as to individual rights. It made provisions for the elimination of unnecessary parties, and for the addition of necessary parties. It fixed the duty of water in second feet and acre feet. A large part of it consisted of schedules and tables in which each tract of land involved in the litigation was described by section, township and range. It set out in separate columns dates of priority, commencing with the year 1846, and the name of the proprietor in relation to each priority, the location of each diversion dam, as well as each ditch taking water out of the river, and determined the quantity of water in second feet which each parcel of land was entitled to with a limitation thereon in acre feet. This decree, substantially as then prepared, with the exception of that feature which relates to the adjustment of the relative rights between the United States and the Upper Valleys people, has been accepted by substantially all of the parties as satisfactory. They are now waiting for the Department of Justice and the Department of the Interior to approve what has been done, and upon such approval, they appear to be ready to adjust every remaining difference and bring the case to a close by the adoption of a consent decree.

The part of the decree which settles the rights between the Government and the upper Valleys people is incorporated in Article VIII. Because of its importance and the difficulty of analyzing its involvement. I have thought it best to set it out in full. It is as follows:

ARTICLE VIII.

That the diversions of water from the Gila River by the so-called upper valleys defendants (parties defendant to whom rights to divert water from the Gila River at points above the San Carlos Reservoir are decreed herein), comprising the defendant canal companies named below with the parties defendant named in the Priority Schedule and attached tables who are decreed rights through the canals of said companies and are served thereunder, and certain individual parties defendant who are accredited with rights to divert directly from the stream through private ditches, to wit:

Albert Canal Company, Billingsley Extension Canal Company, Black & McCleskey Canal Company, Brown Canal Company, Colmenero Canal Company, Colvin-Jones Canal Company, Cosper & Windham Canal Company, Cosper & Windham Extension Canal Company (Under contract whereby Cosper & Windham Canal Company makes actual diversion) Curtis Canal Company, Dodge-Nevada Canal Company, Duncan Canal Company, Fort Thomas Consolidated Canal Company, Fourness Canal Company, Graham Canal Company, Moddle Canal Company, Montezuma Canal Company, San Jose Canal Company, Sexton Canal Company, Shriver Ditch Company, Smithville Canal Company, Sunflower Canal Company, Sunset Canal Company, Tidwell Canal Company, Union Canal Company, Valley Canal Company, York Canal

Company; York Cattle Company R. H. Angle, J. H. Brown, T. D. Burton, W. C. Craufurd, J. W. Foote, R. C. Gilleland, J. H. Henderson, C. C. Hester, F. E. Ross, R. Sexton, Laura Short:

and/or their predecessors in interest, for the irrigation of the lands described in said Priority Schedule made part of Article 7 hereof, since their inception have been made under rights which were and are junior and subject to certain extensive rights of plaintiff to divert the waters of said stream at points below the diversions of said defendants and also below the San Carlos Reservoir, which said rights of plaintiff are set down and referred to in said Priority Schedule, but are further identified and particularly described in Article VI and VII hereof, it being evidenced thereby that the earliest right of plaintiff is prior in time to all and every of the rights of said defendants, and certain of plaintiff's other rights are prior in time to certain of the rights of said defendants; that, however, plaintiff and said defendants, in recognition of the desirability of making it practicable for said defendants to carry on the irrigation of said upper valley lands to the extent to which the areas to which their said rights apply heretofore have been irrigated and so that the said San Carlos Act shall inure in part to their benefit and this suit may be compromised and settled, have agreed that the following provisions shall be and they are hereby embodied in this decree, which said provisions in turn, and in so far as they affect the other parties in this cause, shall inure to the benefit of and be binding upon them, to wit:

(2) That on the first day of January of each calendar year, or as soon thereafter as there is

water stored in the San Carlos Reservoir, which is available for release through the gates of the Coolidge Dam for conveyance down the channel of the Gila River and for diversion and use on the lands of the San Carlos Project for the irrigation thereof, then the Water Commissioner, provided for herein, shall, to the extent and within the limitations hereinafter stated, apportion for the ensuing irrigation year to said defendants from the natural flow of the Gila River an amount of water equal to the above described available storage, and shall permit the diversion of said amount of water from said stream into the canals of said defendants for the irrigation of said upper valleys lands in disregard of the aforesaid prior rights of plaintiff used on lands below said reservoir; the diversion of said amount of water by said defendants to be in accord with the priorities as between themselves stated in said Priority Schedule and for the irrigation of the lands covered by the rights accredited to said defendants in said Priority Schedule and the quantity of water permitted to be taken by said defendants in disregard of prior rights of the United States below is in addition to and not exclusive of the rights of said defendants to take from the stream in the regular order of, their priorities as shown by the Priority Schedule, but of course within the duty of water limitations of this decree; that if and when at any time or from time to time in any year, water shall flow into said reservoir after said date of first apportionment and shall be stored there and become added to the available stored water in said reservoir, the said commissioner shall make further and additional apportionments to said defendants of the natural flow of said stream as the same is available at the diversion points of said defendants, which

said apportionments shall in turn correspond with and be equivalent in quantity to the amount of such accessions or newly available stored water supply; that in calculating apportionments of the stored water supply the Water Commissioner shall make appropriate deductions for losses for evaporation, seepage or otherwise that may be suffered between the time of the apportionment and that of the diversion of a corresponding quantity of waterfrom the stream; that such apportionments, corresponding with net accessions during each annual period after first apportionment, shall be made by said Water Commissioner at least as frequently as once per calendar month (provided accessions to stored supply have occurred during that period) and at such more frequent intervals as the conditions in his judgment may demand – his decisions in these regards to be subject to summary review by the Court as provided in Article XII hereof and said Water Commissioner shall see to it that his said apportionments, when made, forthwith shall be placed of record herein and so posted or published as to inform all interested parties in that regard with reasonable promptness and despatch [sic]; it being herein explicitly provided that no apportionment or apportionments, made during any calendar year, shall carry over or be available in any manner for the succeeding year; that the diversions made by said defendants of the natural flow of the Gila River thus apportioned to them in disregard of the said prior rights of plaintiff shall be regulated by the Water Commissioner (under the authority and powers given him by this decree and/or by such further orders of the Court as may be made in that relation) in accord with the rights and priorities accredited to each of said defendants in said Priority Schedule,

provided always that such diversions shall be limited to the amount of water then apportioned, as aforesaid, and in any event, during each irrigation season, do not and shall not exceed the total amount of water called for under the right accredited in said Priority Schedule to any given defendant, namely: 6 acre feet per acre for the irrigation season as defined in Article V hereof; and provided further that the drafts on the stream by the upper valleys defendants shall be limited to a seasonal year diversion which will result in an actual consumptive use from the stream of not to exceed 120,000 acre feet of water; said consumptive use made in any seasonable year shall be determined by adding the recorded flows at a guaging [sic] station located in the Gila River at Red Rock Canyon above the heading of the Sunset Canal in New Mexico and a guaging [sic] station located in the San Francisco River immediately above its confluence with the Gila River and deducting from said sum the recorded flows at a guaging [sic] station located on the Southern Pacific Railway bridge crossing the Gila River near Calva, Arizona; and the Water Commissioner shall determine what diversions are permissible and reduce diversions in the inverse order of their priorities when and to the extent necessary to accomplish the aforesaid result. The aforesaid measurements shall include the whole flow of the stream, including floods, at the three points of measurement, and no allowance shall be made for accretions or additions to the flow between the point of measurement at Red Rock Box Canyon, and the confluence of the Gila and San Francisco Rivers, and in turn between the confluence of the Gila and San Francisco Rivers, and the aforesaid guaging [sic] station at the Southern Pacific Railway Bridge.

Said method of measurement is adopted as sufficiently accurate for practical purposes and as better suited for administering this decree than any more refined method of determining actual consumptive use.

(3) Upon agreement made by the owner of any right set forth in the Priority Schedule for land in the Safford Valley, water may be diverted by the owner of land in the Duncan Valley within the duty of water in this decree set forth and within the apportionment of water for said Duncan Valley land in disregard of such Safford Valley right or rights, and that such waiver shall in no way deprive the Safford Valley lands thus waiving of their full apportionment of water herein provided for based on water stored in the San Carlos Reservoir or their full right to take from the stream, in accordance with their priority and within the duty of water fixed by the decree as against water rights of the United States held on account of the San Carlos project, but the right of the United States to insist upon its priorities as defined and modified herein as against said Duncan Valley lands shall not be abridged by this provision.

(4) That water released at the will of the plaintiff and for the purposes of the plaintiff from the San Carlos Reservoir at any time after the date of this decree other than for the proper irrigation of 80,000 acres of land or its equivalent in the San Carlos Project, shall be considered as stored in the San Carlos Reservoir at and after the date of such releases, and available as a basis for the above-described apportionment of the natural flow to said defendants as it would be if such withdrawals had never been made.

> (5) PROVIDED ALWAYS, that if by reason of lack of available storage in the San Carlos Reservoir no apportionment of the natural flow of said river is or can be made available to said defendants, then the diversions of said defendants, of or as soon as apportionments previously made to them have been consumed, shall no longer be made in disregard of the prior rights of plaintiff below said San Carlos Reservoir, but shall instead be made under and in accord with the rights and priorities set down in Article V, and the Priorities Schedule made part hereof, and Article VI of this decree to-wit: in accord with their several priorities as same are set down in said Priority Schedule and subject to the prior rights of plaintiff as same are referred to therein and further described in Article VI of this decree.

The arrangement thus incorporated in the decree assumes that the construction of the federal project was intended by Congress to inure in a way to the benefit of the lands of the upper valleys. Article VIII is so written as to carry this into effect in a practical way by allowing them to use the water as in the past, but under restrictions based upon available storage for use of the San Carlos project; and, although the provision generally applicable to the lands in suit regarding duty of water is recognized, the ultimate amount accorded to the upper valleys lands is limited by what the decree terms a "consumptive use" of not more than 120,000 acre feet of water during the irrigation season (calendar year).

In order to make this unusual arrangement workable, it became necessary to adopt certain arbitrary provisions. There must be some fixed point relating to storage for the project below at which these defendants cease to participate. This point is set down as being sufficient storage "for

the proper irrigation of 80,000 acres of land, or its equivalent, in the San Carlos project." Any quantity released above that is considered as stored and used as a basis for apportionment of natural flow to these defendants by the water-master or commissioner in administrative control. Then there is a saving proviso which regulates them to such rights only as are fixed by the Priority Schedule affecting all parties in the event of lack of available storage. Article VIII operates as an exception to the general scheme because of the unusual situation occupied by the upper valleys land, and the set up contained in Article 7 continues to be the basis upon which are determined the water – rights of all the parties to the suit.

Mr. Truesdell in a recent statement to the Commissioner of Indian Affairs sets down the principal advantages of the arrangement in the following words:

> The principal advantages of this settlement to the Indian and white lands of the San Carlos Project are:
>
> (a) It settles their rights in the natural flow of the stream to an extent and with priorities deemed satisfactory and perhaps much better than could have been obtained if the suit were fought out;
>
> (b) It defines the Upper Valley lands having water rights and limits their uses, and by giving the San Carlos Project a storage right as of 1924, does much to protect that project from future unwarranted encroachments on the stream above the project lands. And the chief advantages to the Upper Valley lands are: (a) the removal of the menace of enforcement of prior rights below as long as the San Carlos Reservoir storage conditions are met, thus giving those

> lands a reasonably secure water right; and (b) bringing them into an ordered administration with San Carlos Project lands and so giving them a sort of recognition and perhaps preference, if further protection for them should be found feasible in the future.

Article V, in brief, regiments the stream and sets up schedules which contain minute details of all rights of the parties and the date of priority of use based upon appropriation or diversion. It fixes the limitation of the amount of water to be used generally. Six acre feet per acre is the seasonal use. An acre foot is a quantity of water one foot in depth covering each acre. This use is limited, however, by diversions based upon cubic feet per second flow. It says that while six acre feet is the maximum amount of water . . . "it shall not be diverted from the stream at any time during said season at a greater rate than 1/80 of a cubic foot per second for each acre of land." That is a general provision. There are some exceptions based upon unusual conditions left to the disbursing commissioner or watermaster. Beneficial use of six acre feet per acre would be an unusually low duty of water in most of the western states where irrigation is in vogue, but it is perhaps about right in Arizona considering the long irrigation season which is equivalent to the calendar year, the extremely warm climate during a major portion of the year and the insufficient amount of seasonable precipitation. The duty of water based upon second feet, namely, a service of one second foot to each 80 acres of land, is about as high a duty as can be found in any jurisdiction in the west. The apparently low duty in acre feet and the high duty in second feet act as checks one upon the other, and the adoption of the two measures is highly beneficial under the circumstances.

Article VI, which is also referred to in the article which deals with the upper valley lands, is in the nature of the compromise. It first deals with the rights on behalf of the Pima Indians of the Gila Indian Reservation. The amended Bill of Complaint alleges that the allotted area of 49,896 acres is entitled to 632 second feet running continuously throughout the year with a limitation for each year of 252,730 acre feet diverted through canals conveying water to these lands and also by means of the Ashurst-Hayden Dam, located about ten miles above the town of Florence, Arizona, and the Sacator Dam, located on the reservation. The decree, however, allocates 210,000 acre feet during the irrigation season for these lands from the natural flow of the river at the above-mentioned dams, at a rate of diversion not exceeding 437.5 second feet at any time during the season upon 49,896 acres plus an administrative area of 650 acres "to the extent that the hereindescribed water right which is sufficient for and limited to the needs of 35,000 acres." It appears to be the opinion of all who have looked into the conditions affecting these rights, that water sufficient to serve beneficially 35,000 acres from natural stream flow to the points indicated, is entirely sufficient to meet the requirements. The claim for a 50,000 acre service with an immemorial priority, as alleged in the amended bill of complaint, is based upon the principle of implied reservation by the Government on behalf of the Indians. The facts as to irrigation of these Indian lands appear to be that something like 12,000 acres has always been irrigated, and that about 23,000 acres had been irrigated in the aggregate but not at one time.

Mr. Truesdell in his report to the Commission of Indian Affairs makes this statement in support of the reduced limitation of acreage to 35,000 acres – "The 35,000

acre figure was chosen as the one best fitting the conditions." Ethelbert Ward, Special Assistant to the Attorney General, is of the opinion that this amount is far in excess of anything the court might be reasonably expected to award. It should be remembered that this disposition is made without any change whatever as to priorities of use. The priorities are maintained as alleged in the bill of complaint.

The claims made on behalf of the Apache Indians on the San Carlos Reservation present quite a different situation from that which affects the Pimas on the Gila River. The Pimas are an industrious, farming race. The Apaches are and always have been warlike and in no sense agrarian, but little of the land within their reservation is susceptible of profitable cultivation, and but little has been irrigated since the establishment of the reservation. Also, there are some private rights of the Upper Valleys people that antedate the time of the establishment of the reservation in 1872. As to some other rights there is conflict as to this priority. It would be a weak case to submit to the court upon the facts that could be adduced. Opinion has been expressed by a number of parties on the Government side of this case that in the event of submission upon the facts, the court would allow little, if any, water for Apache lands. The Government has adopted no plans for the irrigation of any land within this reservation. However, the amended bill of complaint asks for water for the irrigation of 3,000 acres and an allocation on that behalf of 37½ second feet of water. The settlement arrived at for the purposes of the consent decree gives this reservation enough water for 1000 acres with a priority second only to the right of the Pimas, and allocates 12½ second

feet of water for that purpose. This settlement is, in my opinion, a wise one.

The question here arises as to what to do with the water thus decreed to the Apache Reservation. There is little prospect of it being used there. Out of practical consideration of this matter there has been evolved a plan whereby the irrigation districts of the Upper Valleys may under certain conditions and within the limits of time, acquire this right by purchase. This, after a fashion, takes the place of the original proposition that the upper valley users under the first substituted storage plan should pay the sum of $10 per acre for the water necessary for their beneficial uses above the reservoir. Paragraph two of Article VI attempts to take care of this feature. It permits the Upper Valleys Irrigation Districts to purchase this 12 ½ second feet water right for $62,500 to be paid within "two years from the acceptance of said offer, if said offer shall be accepted within five years from the date of this decree." The paragraph hedges about this feature a saving provision that it must in no way conflict with local law. Presumably the purpose is to avoid any conflict which might in the future arise regarding the established law as to changes of points of diversion, that is transferring the right to divert lower down the stream to points above. This provision is very unusual. It is the one provision evidently agreed upon between the parties about the propriety of which there is some question in my mind. However, if it is necessary that this feature be retained in order to effectuate the general settlement of the suit, its peculiarities and unusual character should not be considered the determining fact. This matter has been submitted to Mr. Ward for further opinion. He has so far done nothing except approve the scheme as a whole.

Article VI also makes the transfer contingent upon its being sanctioned by law, which presumably means that Congress will be asked to legislate before it is consummated.

In the other articles of the proposed decree the allocations regarding the Government's rights on behalf of its Indian wards and for storage, are definite and in every instance, except as above indicated, the priorities under its reserved rights, as well as under the large appropriations of 1916 for purposes of the storage reservoir, are protected and clearly set out. The Secretary of the Interior is authorized to distribute under contract certain waters for municipal purposes, pursuant to the Act of Congress approved March 7, 1928. The proviso in that respect reading as follows:

> That the Secretary of the Interior is authorized to contact with the State of Arizona, and certain towns, villages, and municipalities of that state, for delivering water to them from the San Carlos Project under such terms as he shall think best, etc.

Appropriate provisions are made in the proposed decree in this relation. I deem it unnecessary to go into further analysis of the proposed decree. I have set out the features of the decree which have been the center of controversy with adversary litigants. The other features are such as are necessary in the making up of a document which requires specific allocations of a multitude of separate and distinct rights. These rights are scheduled and are set out in minute detail in many tables covering more than 100 pages. They are the result of painstaking care and able endeavor to work out the problems along lines of fairness and equity. Necessarily it has taken a long time to

reach the results attained. The first draft of the decree was prepared by Mr. Oliver P. Morton in collaboration with Mr. Truesdell, then Superintendent of Irrigation of the Indian Service, and Mr. Southworth, engineer of that service. Later on it became necessary to make a number of changes, the important ones being those relating to the Upper Valleys lands and the water rights of the Apache Reservation. During the last two years, since the services of Mr. Morton ceased, valuable and effective assistance has been rendered in the way of negotiations and discovery of necessary facts by Mr. Howard Elliott of Phoenix, who has devoted much time as representative of the Upper Valleys people in submitting facts and aid in making necessary adjustments. Recently, Mr. Ward of Denver has devoted much of his time in connection with the matter. Numerous motions and other papers to be filed in court, the purpose of which is to eliminate unnecessary parties, add other necessary parties, dispose of interests represented by answering defendants, etc., have been prepared under the direction of Mr. Ward and with the assistance of the United States Attorney for the district of Arizona, and matters are in such shape at the present time that the final work of shaping the decree for signature of the court is awaiting the approval of the scheme woven into the consent decree by the Attorney General and the Secretary of the Interior. I have no difficulty in recommending that it be approved with the understanding that such corrections as may be necessary, growing out of possible errors of description, or otherwise, be taken care of, and this may well be left in the hands of the men who are intimately familiar with all the facts necessary to a complete determination. Much time and labor have been spent in checking and rechecking, and I doubt that there will be any inaccuracies or errors of moment when the document is

finally submitted. This decree, if adopted, will in my opinion result in as satisfactory a determination as is humanly possible to reach.

As hereinabove stated, I was, at the time of the inception of negotiations for a consent decree, in favor of a dismissal of the suit. It was my idea at that time that the use of water by the Upper Valleys people, the ones offering the major controversy with the Government, would not interfere with the Government's plan, but that if interference with such plan by the upper valley water users should eventuate, then the Government had its remedy by going into court and enjoining wrongful use. However, the difficulty in connection with the dismissal without the consent of answering defendants was at once apparent, and no serious attempt was made in that direction. However, the decree as now prepared has fortunately resulted in something better than a dismissal would have meant. The water rights are definitely allocated and every necessary right is taken care of.

I recommend that the Department of Justice approve the work shown by the submitted articles and the statistics accompanying these articles, later to be put into proper form. These matters are merely incidental and in the main mechanical.

Respectfully submitted,

/s/ G.A. Iverson
G.A. Iverson,
Special Assostant [sic]
to the Attorney General.

APPENDIX 5

Los Angeles, California.
August 4, 1926.

Mr. Edward A. Smith,
Special Assistant to the Attorney General,
Federal Building,
Phoenix, Arizona.

Dear Mr. Smith:

Other matters have kept me from answering your letter of July 16th, about the San Pedro River in connection with the adjudication suit, before this.

I thank you very much for the information you give us as to allotments made to Indians on that stream or its tributaries. If you finally decide to include the San Pedro in the adjudication, I think these allotments should be taken into account and rights in connection with them should be fully set up.

As to the basic question of the advisability and propriety of including the San Pedro in the adjudication, I am inclined to adhere to my views expressed to the Department of Justice quite a long time ago. However, I have an open mind on the subject. I feel sure that I could consider arguments pro or con without being in the least bit prejudiced by my former opinion.

The broad features of the situation are as follows:

The stream is of the flash variety. The low reasonably dependable flows are used by ranches very close to the stream itself. This condition has existed for a great many years and one peculiar feature of it is that the water seems to be used over and over again. After these ranches have made their uses there is very little water in the river, if

any, to reach the Gila out of these low flows. In fact the river is often dry where it joins the Gila and also is often dry at other points throughout its own course and sometimes is dry and wet at intervals throughout that course. As I remember it, the opinion of the engineers is that even if these old uses on the San Pedro were cut off entirely, and the water left in the stream, the contributions to the Gila from these low flows would not be increased to any worth while extent from the standpoint of the Pima Indians and others interested in the San Carols Project. In fact as I remember the situation it might turn out that conditions with regard to these low flows would be less advantageous to the project.

If the foregoing is the true situation, the Government would not be interested in having the numerous rights on this stream listed and given priorities in this suit on account of the San Carlos Project or for anyother [sic] reason that would warrant the inclusion of this stream in the suit unless it would be merely to make the adjudication a more complete one than it would be if the San Pedro were left out. In other words it might be argued that in as much as the Government has undertaken to settle and administer water rights on the Gila River, say from the west line of the Gila River Reservation to the New Mexico boundary, it ought to include in that adjudication all tributaries within those limits. The argument would be that even if the Government's interest did not require such a complete adjudication it ought for the public welfare of Arizona to make the adjudication complete and thus give the private water users within this area the benefit of the full adjudication. I think there might be something to this argument if persons on the Gila other than the Government, would be interested in having the rights on all these

tributaries settled. As I see the facts they are not thus interested. It is of no importance to the private users of water on the Gila proper to have rights in the San Pedro settled. The situation with regard to them is exactly such as it is with regard to the Government. The same is true as to the San Carlos River though for different reasons.

As to furnishing the people on the San Pedro River with an adjudication of their rights in this suit merely for their own benefit, I think there is nothing to that. In the first place I do not understand that they want an adjudication and in the second, it would be unscientific to tie their rights in with those of the Gila proper if at the same time the decree had to recognize the fact that their rights ought not to be fitted into and listed with the priorities on the main stream.

So far I have discussed merely the low flow. Turning to the high flows, the Government and the San Carlos Project are considerably interested in these. When the river is in flood water comes down from it into the Gila in considerable volume. Of course the project has no means of storing this water. It follows that its only direct use on the project is to take the place off water that the project would otherwise have to draw from its proposed San Carlos Reservoir. Of course it has an indirect value to the project in satisfying possible prior rights below the project lands.

These high flows can not be interfered with by users on the San Pedro so as to harm the project unless they are stored on that stream. There is only one reservoir site there of any importance; it is the Charleston, southwest of Tombstone and not very far from the Mexican Border. This site is in some respects a fairly good one. I do not remember whether the dam site has been bored so as to see

whether it is an adequate site. I understand though enough in the way of borings or excavations have been made to develop the fact that it is a considerable distance from the surface of the ground down to bed-rock, some eighty feet as I remember. About ten or twelve miles of the El Paso and Southwestern Railway are in the reservoir site and would have to be moved. All together it seems unlikely that this site will be used at any time in the near future and possibly that it never will be used.

Even if the site is used there is no certainty that storage of water there would be detrimental to the San Carlos Project. There is so much of the San Pedro watershed that lies below this site that the stream would probably give the San Carlos Project the same benefit of floods after the Charleston Reservoir should be built as before. Furthermore, if the reservoir were built a large quantity of the water there stored would be used upon lands so situated that the return flow from them would come into the San Pedro. This would hold up the low flows of that stream and would give a greater low flow yield to the Gila River. It seems that storage on the San Pedro would help the project, but even if it would not and the Government wanted to insist upon its priorities with regard to high flows as against such storage, it could do so when the time arose and do it easily and simply by bringing an injunction suit.

The foregoing are the principal considerations I have had in mind. There are one or two others, however, among which are the desirability of not making the suit any more cumbersome than necessary and also the need to avoid putting others as well as the Government and the project to unwarranted expense. In line with this last idea I always feel that it is just as important, if not more important, to have

satisfactory reasons for including a tributary or an area in an adjudication suit as it is for excluding it. The shores of the Department of Justice are more or less strewn with the wreckage of adjudication suits and much of this wreckage has come from trying to include too much in the way of territory, tributaries, and the like. A recent example is the Pecos River matter.

I am simply dictating this letter from memory. Mr. Southworth I am sure would be glad to check the broad facts and to give you the stream flow records, etc., on which they are based.

If you have not already done so, and I do not imagine you have yet had the opportunity, I want to suggest that you make a trip over the land in question. You could go to Oracle a very pleasant mountain place about thirty miles from Florence and spend the night. From there much of the San Pedro region lies out before you so that you can see the general character of the lower part of its watershed and also can see the character of the watershed of its principal lower tributary, the Aravaypa. From Oracle it is a relatively easy and pleasant trip down to Mammoth on the San Pedro and from there to where the stream joins the Gila. One making this trip could return to Oracle for the night and on the next day could either go straight up the river by an old and poor road to Benson, if that road is passable, or could go around to Benson via Tucson on an excellent highway. From Benson which is on the San Pedro it is a pleasant and instructive trip along that river past the old irrigation. I have referred to, to the old town of St. David and to Tombstone and Charleston. One could stay all night at Tombstone if necessary and from there proceed to Charleston which is on the river and from Charleston you can go up the river swinging around the

mountains near the Mexican Border to Bisbee. From Bisbee one can return on a splendid highway to Phoenix in a single day. Of course one could easily proceed from Bisbee to Silver City and the head waters of the Gila proper.

Very truly yours,

(ad) John F. Truesdell

Superintendent of Irrigation

JFT:HG

APPENDIX 6

Coolidge Dam Project
San Carlos, Arizona.
September 23, 1926.

Mr. Edward A. Smith
Special Assistant to the Attorney General
Phoenix, Arizona.

Dear Captain Smith:

Referring to your letter requesting my comments on the San Pedro River adjudication, I may say that Mr. Truesdell's and your own ideas accord very closely with mine.

From an engineering standpoint the San Pedro River is not a very large factor in the water supply of the Indians, or the closely related San Carlos Project. As has been pointed out, it is a flash stream, pure and simple. Rapid erosion of relatively recent years has made its course a wide channel, very gravelly and sandy in its nature. The normal or average flow soon sinks into the gravel and while rock ledges or other obstructions occasionally bring it to the surface, especially in its upper reaches, yet the quantity reaching the Gila is almost negliable [sic]. It, undoubtedly, would be very hard to show that any substantial quantity of the low flow would reach the Pima Indian lands even though undiverted along its course.

As has also been pointed out, we do expect to make a rather limited use of the flood flows of the San Pedro. This is entirely dependent upon our facilities for its diversion. While a reservoir at Charleston might at times shorten the "lag" of a flood and accordingly decrease our diversion possibilities yet on the other hand a flood on top of a full reservoir, or any flow over the spill-way would act to

increase the quantity subject to diversion. In times of heavy rainfall or flood conditions the large watershed area below the proposed Charleston dam would undoubtedly furnish more water than we could divert. Increased irrigation through storage and consequent stream flow regulations would increase the low or underground flow reaching the Gila.

Personally I can not see any benefit to be derived, as far as the Indian interest is concerned, from an adjudication of the San Pedro water. It would seem also, in view of possible storage development, that to involve the San Pedro in what might prove to be protracted litigation would work a hardship on the land owners and otherwise create a condition which we ought, if possible, to avoid.

Very truly yours,

Engineer.

cc to Mr. Truesdell
Supt. of Irrigation.

APPENDIX 7

B M P

4691-03-250 &

Post Office Box 357,
Phoenix, Arizona,
October 20, 1926.

Attorney General,
Washington, D. C.

In Re: United States vs Gila Valley Irrigation District, et al, Globe E-59.

Sir:

Yours of October 5th and 6th received, and I am endeavoring in this to give you my general point of view in regard to this suit of adjudication. It must be remembered that it is extremely hard for the Government to prosecute a suit of this kind, and I am greatly of the opinion that the results desired in the suit already started could have perhaps been reached in a more simple manner; however, now that the suit has been brought, for various reasons, both psychological and otherwise, which no doubt suggest themselves to your mind, it would be far better to continue the prosecution of it than to attempt to drop it and begin a new suit.

A careful study of the bill of complaint, together with conditions that exist in the matter of contracts with the whites in the Florence-Casa Grande District, and also the peculiar situation that exists in relation to the three irrigation districts on the upper reaches of the river, to-wit: Virden, Franklin, and Gila Valley, leads me to be strongly of the opinion that this complaint should be re-drawn. I am now and have been for some time working upon that theory and the motions that I sent you a short

time ago are motions leading toward a simplification and precise naming of various defendants.

A new bill of complaint should be drawn, stating in a better and more definite manner the rights of the plaintiff. It could be so drawn as to much better describe the defendants to the suit. By this I mean especially distinguishing between those whose interests are on the side of, and those whose interests are opposed to the United States; and in this connection, I think a much more accurate statement should be made as to the ways in which defendants encroach upon rights of the United States. In the redrawing of this complaint, when the rights of the United States (which include those of the Pima Indians together with the whites in the Florence-Casa Grande Project, the Apache Indians, and any other rights owned by the United States) have been set up, due consideration should be given to having this done in such a manner that some method can be provided, if this is possible, of dispensing with elaborate answers.

In a case involving as many defendants as there will be in this one, the plaintiff will have to prove its case in any event for the reason that it will be practically impossible and at least impracticable to search through the numerous pleadings and attempt to rely upon admission made by any defendants. Unless this simplification is carried out, the pleadings will be so voluminous that the case will be practically endless. I am of the opinion, therefore, that the Government should offer in the bill of complaint itself and by way of agreement or stipulation said stipulation or agreement to be generally signed and having the Court's approval, that the averments of the bill of complaint should be taken as in issue without formal

pleading, or possibly this same result could be reached in a motion for an order.

Another point which must be taken up either concurrently or immediately after deciding upon the plaintiff's rights and complaints is the territorial scope of the suit for adjudication. You already have on file in your office a special report on the San Pedro River phase of this adjudication which gives in part my ideas of the territorial scope of this suit. There is one point at the present time which I am considering and am going into as fast as possible in regard to this phase of the question and that is the question of extending the suit in the state of New Mexico. I am not yet satisfied on the legal points involved and if there is clear authority to have the adjudication disregard state boundaries, the addition of certain lands in that part of the Duncan Valley which extends into New Mexico and possibly the addition of another small valley further up the Gila River might be very desirable. However, this is a matter which must be subject to considerable investigation and will be determined to some extent by information which I am now gathering through conferences with the Indian Service Department. While the foregoing matters are being gone into and decided, it is also very desirable to decide who are the proper parties defendant. In fact, these three questions are so entirely dovetailed and interlacing that they must be decided and worked out in the most definite manner each with the other.

In a suit for the adjudication of water rights, I have come to believe that the end sought is the allocation of water to particular lands. This ordinarily can be reached by making the diverting agencies defendants on the theory that they can represent the lands even though they are not the ultimate owners of the water rights or by adding to

these diverting agents the water owners and users themselves, and if this end is attained, the adjudication suit has attained its purpose.

The State of Arizona has done a great deal of work making water adjudications within various districts that the present suit is supposed to cover, and it seems to me that it would be wise for the Government to attempt to use these adjudications as far as they are reasonable [sic] accurate. Of course, the Government can not do this as a matter of right and it will have to be done by agreement or stipulation which, I am of the opinion, if the bill of complaint is re-drawn or amended properly, can be accomplished. In considering the question of defendants, there also arises the fact that while many of the potential defendants are members of water users' associations or ditch companies, yet apparently there are a number of water users who have old rights and are not members of water users' associations and are getting their water through appropriations made and small ditches constructed by them and these users' lands are situated in most instances just outside of or between districts. This class of water users has to be thoroughly investigated, their source of supply, whether or not they do have some connection with the water users' associations, whether their names are still on the records, or if they still are users of the water, must all be gone into before an intelligent opinion can be formed.

The list of defendants now named in this adjudication numbers somewhere in the region of 450. In my investigations up to the present, I have already found (this I have spoken of in my monthly reports) quite a number who were deceased and had been deceased for some time prior to the filing of this suit. I have found a great many who

were referred to as "John Doe" defendants that I have been able to locate and give their proper names. I have found many errors in the spelling of names and errors in the initials as to the exact naming of defendants. I have found a number who were not named as defendants who, when the proper scope of this adjudication has been arrived at, no doubt will be proper parties defendant, and a number who have made answer though not named as parties defendant. So, that in the ultimate analysis of this case, we are bound to have some hundreds of defendants.

I would like to say just a word here in regard to the warning order which is on file in this suit. The only reference or attempt at a basis on which to place the warning order that I have been able to find is in the following:

"That certain others of said defendants, to-wit: Nochols and Company, Franklin Canal Company, four other corporations, and thirteen defendants are named as defendants as doing business in the District of New Mexico, County of Hidalgo, or resident thereof."

Another paragraph on page thirteen of the printed bill of complaint, beginning on line twenty-five states:

"First: That a subpoena may be issued out of and under the seal of this Honorable Court directed to the above named defendants who are residents of the said District of Arizona as aforesaid and that warning orders may be duly issued to such of said defendants as are residents of the District of New Mexico and that an order for service upon such defendants as cannot be found be duly published, according to law, commanding them and each of them to appear before this Honorable Court on a certain day and under a certain penalty to be herein inserted, to answer this Bill of Complaint sentence by

sentence and paragraph by paragraph the same as if the same were again repeated and him thereunto particularly interrogated, setting up fully their claims to the waters of the said Gila River and its tributaries."

This warning order was based upon those two allegations while at the same time every party defendant named in the bill of complaint is named in this warning order with no supporting affidavits filed, giving the court no allegation or certainty as to what defendants this warning should apply. Quite a number of defendants named in the warning order have already been served, and I am fairly well grounded in the opinion that in a suit of this character every defendant can be reached either through some water district, some irrigation canal company, or through the land upon which the water is supposed to be used. Having the proper parties in court with proper service is one of the vital requisites in a matter of this kind.

A careful analysis of this adjudication shows that as far as the present water users are concerned, who are listed as parties defendant, will ultimately become also witnesses in the case as it will (if the complaint is redrawn) cause them either by making a showing in court or by agreement and stipulation to show their usage, appropriation, and right to use. This is undoubtedly true as it relates to defendants other than the Indians. The matter of evidence as far as the Indian use is concerned is almost entirely a matter of record and of law. If the record evidence can be obtained, and I sincerely believe it can, that will bring the Indian use of the lands and water and the intention of the Government toward reserving water for their use, at the time of establishing the reservation, under the Winters Decision, there will be little need for parole evidence.

I am bending every effort toward the early solution of this case along the lines indicated in your letter, and I feel that the Government should be ready to procede [sic] with the trial whether or not it can use the decrees already promulgated by the state courts; but in any event, the work of presenting the Government's case will be very great. The Government will be under the necessity of taking care of its claims on behalf of the Indian wards and its projects as well as the whites that it represents on account of the contract with the Florence-Casa Grande Association. Many certified copies of public documents will have to be obtained. The Indian Service has much exhaustive and valuable data which will have to be gotten into shape.

Such progress as I have briefly outlined above, I feel will meet with the approval of the Indian Service; it will also be approved by the white users in the Florence-Casa Grande District, who are working on the side of the Government. I also feel certain that this program will be approved by friends of the Indians generally. I am also entirely convinced that to carry out this program will save time and expense; that if the Government attempts to go ahead with this adjudication suit under the bill of complaint as it now stands with the existing unnecessary wide scope of the suit, with no provisions made for the simplification of the pleadings, the result will be delay and confusion. The time to straighten out these matters is now, even though it does appear on the face of it that we are moving with no great degree of rapidity. To be of its greatest value, the adjudication must cover water rights accurately to some 150,000 acres of land, provided the scope of the suit is limited, and to a considerably greater acreage if the scope is not limited but is allowed to stand as it is at

present. To do this work well, in my mind, is the principal issue; to do it promptly is most desirable; but the obtaining of proper and satisfactory results rather than getting quick results is really the important consideration.

Very respectfully,

Edward A. Smith,
Special Assistant to
the Attorney General.

EAS: G

APPENDIX 8

IN THE DISTRICT COURT OF THE UNITED STATES,
IN AND FOR THE DISTRICT OF ARIZONA,
Globe Equity No. 59

THE UNITED STATES OF AMERICA, Plaintiff, v. GILA VALLEY IRRIGATION DISTRICT, AND MANY OTHERS, Defendants,	BRIEF of THE UNITED STATES

PURPOSE, SCOPE AND NATURE OF SUIT

THE OBECT [sic] OF THE SUIT IS TO ADJUDICATE RIGHTS TO DIVERT WATER FROM THE GILA RIVER WITHIN A DEFINED AREA, OR STORE IT ABOVE FOR USE WITHIN THAT AREA. THE SUIT IS IN THE NATURE OF ONE TO QUIET TITLE TO REAL ESTATE.

This suit is one to adjudicate water rights within a specified area of the Gila River. That area is defined in the complaint and roughly embodies the stretch of the river extending from the lower or western end of the Gila River Indian Reservation, up that stream, to a line parallel with the boundary between the States of Arizona and New Mexico, but 10 miles east thereof. The idea is to settle rights of diversion along this stretch of the stream, excluding, however, rights to divert water of the tributaries – the Salt, which flows into the Gila on the western edge of the Gila River Reservation; the Santa Cruz, which reaches the

Gila on the Reservation west of Florence; the San Pedro, which comes into the Gila above the Ashurst-Hayden diversion dam, some 10 miles upstream from Florence; the San Carlos, . . . comes into the Gila on the north within the site . . . Coolidge reservoir; the San Francisco, which joins . . . also from the north above the Solmonville-Safford . . . below the Duncan Valley; the San Simone, which is an extremely flashy wash stream and comes into the Gila from the south below the Duncan Valley, and all parts of the Gila River proper above the line mentioned as being some 10 miles within the State of New Mexico.

The purpose of thus limiting the scope of the suit is that it is thought that the so-called Kent Decree and other adjudications adequately protect the rights of the United States as far as matters here in controversy are concerned on the Salt River, and that the situation is such that no useful purpose would be served by attempting to adjudicate rights and administer diversions from the stream in this action outside of the territory mentioned, except to determine the rights of the defendants named, if any, to store water on reaches of the Gila River above the territory mentioned and above the Coolidge reservoir for purposes of using it within the general area covered by this suit.

The suit is primarily intended to protect the rights of the plaintiff, the United States, but it is realized in so doing it will necessitate the administration of the stream within the area mentioned, by this court, and therefore an opportunity is afforded for a full settlement of rights within that area – a settlement between the defendants among themselves, if they so desire, as well as a settlement between the defendants and the plaintiffs.

The suit is in the nature of one to quiet title to real estate. The rights which the plaintiff, the United States, sets up and claims are distinct property rights and of the same general character as rights in land. The United States, here, does not set up and seek to have its title quieted to all of the rights it owns in this stream within this area, but simply to the rights described in the complaint.

APPENDIX 9

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF ARIZONA

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The United States of America, Plaintiff,	)	Globe Equity No. 59
vs	)	Motion to Dismiss
Gila Valley Irrigation Dist., et al. Defendants.	)	Certain Defendants

Comes now the United States of America by John G. Sargent, Attorney General, through Edward A. Smith, Special Assistant to the Attorney General, attorneys for the plaintiff, and moves to dismiss the action heretofore filed in this Court in relation to the Boquillas Land and Cattle Company and the San Pedro Water Users' Association, heretofore named as defendants in this action, without prejudice and without cost, said defendants having prior to the submission of this motion withdrawn their answers, heretofore filed in this action, the motion to dismiss being made for the reason that the said Boquillas Land and Cattle Company and the San Pedro Water Users' Association are not necessary parties to the action and that the purposes of this suit and the interests of these defendants will be better served if they are not made parties defendant.

Edward A. Smith,
Special Assistant to
the Attorney General.

APPENDIX 10

MEMORANDUM RE HISTORY AND STATUS OF THE GILA SUIT SETTLEMENT

1. The trial of this suit was halted early in 1931 in pursuance of a general understanding between defendants and the Government (the Departments of the (Interior and Justice) that concerted effort for a settlement should be made, and that the basis for it then being discussed indicated that it should result favorably. In accomodation [sic] of this undertaking the hearings before the Master have been adjourned from time to time – generally for sixty day periods – it being the conception of the parties generally that the pressure incident to keeping the suit alive would tend to expedite the negotiations and insure the cooperation of the interested persons.

2. The issues between the so-called upper valleys defendants (above the San Carlos Reservoir) with their 40,000 odd acres of cultivated lands, and the plaintiff with its Indian and Project rights below covering 100,000 odd acres of land, make up the main controversy on the river. This is proposed to be settled by a so-called substituted storage arrangement under which the said upper valley defendants will be allowed to divert from the natural flow of the Gila, in disregard of plaintiff's prior rights below, in accord with apportionments of that natural flow based on the available storage in the San Carlos Reservoir, being relegated to their junior rights (or to be more accurate, to the rights and priorities stated in the Priority Schedule) when no such apportionments are available by reason of lack of storage. The settlement also involved the disposal of quite a large number of other controversies, mainly growing out of claim of rights to the natural flow of the Gila in the so-called Winkleman area below the San Carlos

Reservoir but above the San Carlos Project, and claims by landowners in the Florence-Casa Grande territory but outside the presently designated or determined boundaries of the San Carlos Project. It was conceived that the settlement, if fully effective and adequate, would involve a definition and determination of all existing rights in the Gila River within the scope of the suit, and the elimination of all parties who did not belong in the suit but happened to be there by reason of mistakes, inadvertencies or the like which occurred before our advent.

3. The settlement, in order to make it readily enforcible [sic], was planned to be embodied in a so-called consent decree which would fix and define, in accord with said settlement and in every detail, all rights involved in the litigation, and provide the machinery for their control and administration. Our job, therefore, has been in effect to ascertain and establish, by consent as distinguished from trial, all of the rights involved, and to set them down in the form of a valid and effective decree which, upon its being assented to in writing by the defendants on the one hand and by the plaintiff on the other (presumably through the assenting signatures of the Attorney General and Secretary of Interior) would be signed and entered by the Court. As planned, the matters of adding the necessary new parties, of the elimination of those not needed or improper, and of the taking of further orders pro confesso and the like, are to be handled by appropriate process in advance of the entry of the decree. As minor changes in the name schedule, where so many hundreds of the people are involved, are likely to be needed up to almost the closing hour, it is proposed to have the necessary motions and orders made just before filing the decree, under one

comprehensive notice charging all proper parties, which in turn will work an economy.

4. While the method proposed for settling the main controversy has been agreed to in principle by the parties, the undertaking, as is apparent, has been primarily made up of negotiating, digging up the material for, and putting together a complete document which can be signed and made the instrument of perpetuating the settlement. The preparation of this document has kept pace with the various phases of the negotiations, and is in the form of an assumption that the negotiations will result favorably and that all ancillary proceedings in support thereof will have been taken. Upon being notified that lack of available funds made it necessary to transfer the conduct of these matters in the Government's behalf to the United States Attorney's office of Phoenix, I turned my attention from pending negotiations to the completion of the proposed decree, at least in draft form, as the best method of extending aid to my successor in the matter. This draft is attached to this memorandum and the following comment upon the particular Articles thereof will show in outline the tasks which are yet to be undertaken in the premises.

TITLE OF THE CAUSE

5. The title of the cause which will head the decree will contain the names of all those who at any time have been made parties defendant in the suit under and since the amended complaint. It is here in a draft form with the names of the defendants set down in alphabetical order. The list includes those who yet are required to be added to the suit as new parties. The draft as it stands should be correct in the large but will require proof reading and a final check against

the record. A cross check should show that parties separated from the cause plus parties accredited with rights by the decree equal defendants named in the title.

ARTICLE I.

6. The first paragraph of Article I records dismissals of the suit and amended complaint heretofore made, with the list of parties defendant so affected. Paragraph 2 of the same Article records, as if done, the dismissal of the suit and amended complaint as to an extensive list of parties defendant. These lists have been made up with care but will require a final check against the title and the record. The inclusion of a considerable number of these names involved somewhat close decisions as to how those particular parties should be disposed of in the case; also the Florence-Casa Grande Water Users' Association is a special case in that it has answered showing its members have interests in common with the Government. A formal assent by its solicitor should support the dismissal.

ARTICLE II.

7. The first paragraph of Article II records, as if done, the dismissal of the suit and amended complaint as to the defendants there listed. These men and concerns are located on the tributaries and do not belong in the suit. However, they are answered for by Solicitors Ellinwood & Rose (for Arizona Copper Company and Phelps-Dodge Corporation and Morenci Water Company – the latter now being represented by Morris & Malott of Globe) and Solicitor H. A. Elliott for the others; such answers, as usually is the case in the water suits of this character, setting up affirmative matter. Duly executed stipulations

in the premises with above named corporations are in the office files, with the understanding that counsel will have an opportunity to see our proposed motions and orders, and the stipulations with the other similarly situated defendants, etc., when the time comes for their filing and presentation. My memorandum to Mr. Elliott of June 1, hereto attached, will explain the situation of his clients here, and submits a stipulation in the premises. I understand that he regards it as necessary, at least as to a considerable number of said defendants, that he have special authority from them to sign the stipulation and is planning to consult them in the field.

8. The second paragraph of Article II record, [sic] as if done, the dismissal of the suit and amended complaint as to the defendants there named. Stipulations are required in this instance also because of the fact that answers setting up affirmative matter were filed for these people. You will notice that the dismissal in this instance is 'with prejudice'. The questions involved here are discussed in my memorandum to Mr. Elliot (already mentioned) and to Mr. Gust of June 16, which is also attached to this memorandum. In passing, it should be noted that Schedules marked "A" with each of said memorandums show corrections in names which will have to be made as a part of the proceedings described in the latter part of paragraph 3 above. A memorandum for Mr. Denton, soon to be complied, will make a similar showing in its Schedule A. As a measure of precaution, we had planned to make another and final check against the record of the data given in these memorandums.

9. The third paragraph of Article II has to do with the proposed special dismissal of the cause as to the defendants there named, and further assumes that stipulations

providing for said dismissals wil' be made and filed in the cause. The entire paragraph makes what might be regarded as the ideal set-up in the event that the somewhat delicate and necessarily rather extensive negotiations with these defendants should result in their elimination from the cause. These people comprise the so-called real defendants within the Florence-Casa Grande area. They have files [sic] answers setting up claims of rights to the waters of the Gila River but, in effect and perhaps primarily, are seeking by way of said answers to compel the Government to allow them to participate in the benefits of the San Carlos Project, claiming that their lands should have been designated as within said Project because of their location, rights to water, ect. [sic] Their lands if watered at all (unless by independent pumping operations) must look to the Government canals for their deliveries. The negotiations as to these people are in a quite delicate stage. To carry them forward would involve commitments for the future. They were curtailed on receipt of the letter from the Department of April 28, 1932, which in effect states that such commitments would be in violation of instructions. The fact was also in point that the United States Attorney had informed the solicitors in the cause more or less generally about a month ago that he was expected to take over this work.

10. The negotiations with the Fennemore and Stahl clients, which make up the second and third groups listed in the paragraph, have made some definite progress. There would seem to be a good chance, under skillful and fair handling, that those solicitors may be able to consent to have their clients eliminated from the suit along the lines set down in the third paragraph of Article II. Certain rearrangements of area are involved in one instance, and

in all it is the idea that their remedy, if any there be, must come out of the Department of the Interior, or even possibly Congress. The understanding with the clients of Judge Norviel, who make up the last group (Catherine A. Norviel, H.D. Thornton, and Helen Slaughter) may be regarded as fixed. As aforesaid, the matter is a delicately balanced one, and it was planned to expedite the (potentially favorable) negotiations with the Fennemore and Stahl clients, and under this advantageous precedent to take the matter up with Judge Baughn who represents the first, and in some measure the most troublesome, group in the paragraph.

11. A very considerable effort has been directed to this phase of the case by reason of its evident and somewhat unique importance. A failure to blast these people out of the suit apparently means an eventual trial of of [sic] the special issues involved. The idea of achieving a settlement regardless of their claims, although presenting some real difficulties, of course should be explored in due order.

ARTICLE III.

12. Article III provides for the separation of a considerable list of people from the suit for the reason that they are not necessary parties, having interests in common with plaintiff under contracts which assure deliveries of water under the direct reservations and appropriations of the United States. It is assumed that the solicitor for plaintiff, with formal assent of the other Department and attorney Robert Denton, who, in a sort of part measure, has answered for a great number of them under the aegis of the Florence-Casa Grande Valley Water User's Association, would have the power to accomplish the proposed

dismissal upon its own motion. The list, however, will require a final cross check against the record, San Carlos District files and title of the cause.

ARTICLE IV.

13. Article IV sets up the decree pro confesso which in due course necessarily follows the taking of orders pro confesso against those who have defaulted in making appearance, plea or answer. Quite a larger number of orders pro confesso were taken in the earlier stages of the suit, but apparently none were valid save those against the American Smelting and Refining Company, D. Bertoglio, Beatrice Perry, James B. Pruett, and Antonio Specia. The Article as it stands assures that orders will have been taken against the other persons named therein at least more than thirty days in advance of the entry of the decree. Spaces are provided in the list for the possible entry of the names of T.K.B. Glasspie and Grady L. Herring whose situation is further discussed in connection with the text for Article X.

ARTICLE V.

14. With this Article we enter into the more substantive part of the decree. It begins the text which has for its purpose an effective and adequate definition of the rights which are being adjudicated. As now written it contains items and paragraphs which are in accord with advanced and modem practice in the matter of setting up water rights in decree form. On the other hand the Priority Schedule and accompanying tables to which it refers are of voluminous and complicated character, and were I to be further occupied with the matter, I would make some

careful review of the possible further requirements as to the text which will introduce said Priority Schedule and tables. The defendants in the cause may also have some suggestions to make in this regard. The Priority Schedule, itself, which is made part of this article, may be regarded as a completed and checked document, I believe, save in a few particulars. It provides, insofar as they can be anticipated, blank spaces for those rights concerning which negotiations are still pending (primarily located in the so-called Winkleman area), and as to a certain few names and descriptions awaits further specific word from the field. It has been the plan, I think, of the counsel for the main group in the upper valleys to make it available by copy at some convenient place for examination by individual defendants as a sort of final check and perhaps, in passing, to charge their clients with notice as to the specific statement of their priorities in the decree. Its items in large measure are based upon various regional decrees and water commissioner's findings, as interpreted by defendants' engineer and the writer; undertainties, [sic] omissions and excesses being cured in so far as practicable as we digested the great grist of material before us. Headings for the various columns in the Priority Schedule are inserted for the first page; the completion of this typing job for the other sheets, as a measure of economy, being left until the last in discount of the possibility that the building of the Schedule through its various years might suggest some minor modifications in the headings. At the present writing they seem to me adequate as they stand, however, and presumably may be typed into the appropriate blocks when a clerk can be assigned to the task. The sheets of the Priority Schedule, and of the tables attached thereto, are numbered serially in Arabic. It is proposed to number the pages of the title and text of the decree,

running right through the document before and after the Schedule and tables, with worded numbers or Roman numerals.

ARTICLES VI and VII.

15. In the Priority Schedule it was practicable only to give intelligible references, under appropriate dates of priority, to the rights of the United States. Later Articles of the decree are there referred to for the specific set-up and description of said rights. Article VI does this and Article VII further defines the interior mechanism which is to regulate the handling of said rights. These Articles are generally self-explanatory so but little comment is needed here. The specific description of the 27,000 acres of 'White' lands covered by the Florence-Casa Grande appropriation, and of the 50,000 acres of 'White' lands (inclusive of the said 27,000 acres) which apply to the reservations and appropriations as of 1924, for the San Carlos Project, are set out in detail and in proper order of township and section on the large number of wide carriage sheets which are introduced at appropriate places in Article VI. As a matter of extra precaution these descriptions should have one more final check in the Project office, but I believe their present accuracy is pretty well established.

ARTICLE VIII.

16. This Article is an attempt to express, in the appropriate language of a decree, the adjustment and settlement between the United States and the so-called upper valleys defendants, which latter make up the main body of the so-called real defendants in the cause. The text of the Article, as will be evident from an examination of it,

has to do with the substantive and administrative phases of our so-called substituted storage adjustment with these people. It is a technical and rather complicated matter, and its set-up in the text of the decree no doubt will require some further careful consideration by the Government representatives. A fortiori the defendants and their solicitors will no doubt demand some further time for its consideration. As indicated in an earlier paragraph we are assured by them that it is acceptable in principal.

ARTICLE IX.

17. The Nevada Consolidated Copper Company is operating a large copper reduction enterprise on the Gila River below the San Carlos Reservoir but above the intakes of the Government canals. The rights under which it has been taking water from the river (or form the gravel beds directly supplied by the river) are junior to certain extensive rights of the Government below. The Article records an adjustment with the company under which their uses of water for their copper enterprise, and for the irrigation of some small ranches along the river, may be continued in disregard of plaintiff's priorities upon the payment of certain stated sums. This settlement adheres quite closely to the above described substituted storage plan, and apparently can be consummated in accord with the terms and conditions laid down in the Article. A suggestion by the company that a percentage of elasticity be allowed in top diversions when the enterprise is carrying a peak load is taken account of in the provision written upon a slip attached to the Article. It is conceived that the Government might well assent to this minor amendment. The rights and priorities of the company for its industrial and irrigation uses had to be ascertained by some research

into the history of the district (the so-called Winkleman area), and joint investigations on the ground. These rights have been set down in their order upon a separate wide carriage sheet which is attached to this memorandum. It is proposed to introduce them into the Priority Schedule under the years corresponding with those named in the Exhibit.

ARTICLE X.

18. This Article has to do with certain other priorities and rights in the so-called Winkleman area, which as aforesaid lies below the San Carlos Reservoir and above the Project diversion dams. The principal owner and claimant, outside of the Nevada Consolidated, is one Joseph J. Anderson whose ranch was instituted on the river in the year '78, and has been a going concern (save for occasional failures to divert water on account of floods or otherwise) since that time. Grady L. Herring, although in default on the face of the record, also apparently has a small right as of a late date of priority. T. H. B. Glasspie is a claimant but there is apparently a lack of evidence in support of any irrigation on his place during the last eight years. Both of these names were included as possible subjects for orders pro confesso as well as in this place. As a matter of strategy it was the plan to dispose of them as soon as a favorable settlement had been reached in the more serious case of Joseph J. Anderson. Negotiations with the latter were on their way to a conclusion a short time ago, but could not well be followed up under the conditions described in the above comment on the third paragraph of Article II and because of the necessity of devoting all of my time to the production of the decree form to which this memorandum refers. Anderson is

represented by attorney Holzworth of the Phillips, Holzworth and Phillips firm at Phoenix and is an old-timer with positive and extra-legal theories, for example, about his priority over Indian claims. Never-the-less, favorable progress was made in his case, and it is conceivable that there is yet a good chance, by skillful and fair handling, to settle with him along the lines indicated in the Article, which again corresponds with the substituted storage plan proposed for the upper valleys defendants and involves the payment of a stated sum per acre in consideration of his being allowed to divert stated amounts of water in disregard of Government priorities below. Failure of settlement here would involve an eventual tribal of the Government suit as against Anderson, unless under current financial difficulties, he should decide to take his chance under such rights as of course will be allowed him in the priority table.

ARTICLE XI, XII, and XIII.

19. These Articles, I think, are I [sic] accord with modern practice and are self-explanatory in their character. The appointment of a Water Commissioner to administer the decree is provided for his general duties outlined. Article XIII carries the usual injunction against interference with the rights defined in the decree, and makes other formal and necessary provisions in the premises, including the common expedient in cases of this sort of having each party assessed with his own costs in a suit.

OLIVER P. MORTON

Dated: Phoenix, Arizona, June 27, 1932.

APPENDIX 11

Florence, Arizona,

December 29th, 1931.

John Mason Ross, Esq.
Ellinwood & Ross,
Luhrs Tower,
Phoenix, Arizona.

My dear Mr. Ross:

In the matter of the relation of your clients, the Arizona Copper Company and Phelps Dodge Corporation, to the Government's suit to adjudicate rights on an extensive part of the Gila River, it may be well for me to supplement our somewhat recent conversations with a letter.

The geographical limits of the suit were set on the east with the idea that a line drawn from north to south ten miles east of the boundary between New Mexico and Arizona and excluding the tributaries, would include all of the diversions from the stream which ought to be covered by a suit of the sort the Government had in mind. It was considered, when the suit was brought, that diversions from the tributaries and from the main stream above the point indicated were not of such a character as to necessitate their determination. It was thought also that they might not have to be fixed or interfered with at all; and that in all events their handling should be left to the future.

Your clients and others who divert from the tributaries or otherwise outside of the area meant to be covered by the suit, were made defendants through inadvertence. It is our view, as we have already explained in conversations, that from our standpoint, and we think also from your

own, they should be dismissed from the suit, and of course without prejudice.

We understand the idea that it might be of advantage to your clients to have their rights settled as against the San Carlos project and other Government interests and also as against the other parties to the suit. It seems to us, however, that the place they would gain in the schedule of rights would not give them much of practical value unless they were admitted to the substituted storage scheme planned for the agricultural lands which are within the scope of the suit and lie above the San Carlos Reservoir. It is possible for the Government to bring those agricultural lands into such a scheme because they have used a certain considerable amount of water in the past which has not been counted upon by the San Carlos Project. It is therefore possible for that project, for a consideration, to allow those lands to take water in disregard of the project's earlier priorities during certain stages of water in the reservoir.

This situation however, is not paralleled by that of your clients whose past uses have been small in comparison with the uses you contemplate for the future.

It seems to me that the matter of fixing your clients rights to divert from the stream as against the Government's interests, which are principally those of the San Carlos Project, is a matter that should be left to the future. When you know What [sic] development you wish to make and therefore your need for water I should think that it would be entirely feasible for you to make an arrangement with the San Carlos Project. The basis of such an arrangement, I imagine would be found in the fact that there is water entering the river above the San Carlos Project

but below the Coolidge dam, especially from its tributary, the San Pedro, and also in the fact that underground waters perhaps not directly connected with the river can be made available to that project by pumping. I should think it would be feasible for your company to provide the means for making waters of this character available to the project in return for which the project could agree that your company divert from the Gila or its tributaries to the extent of its needs above the San Carlos Reservoir.

Obviously any arrangement of this sort would have to be made after your clients' needs are pretty well understood. Equally clearly of course I cannot promise anything as to the future or bind the Government or the project or even myself in any way. It simply seems to me that it is wise from both your standpoint and that of the United States for your clients to be dismissed from the suit, and that the physical and legal situation is such as to make it possible for you clients to get the water they need upon reasonable terms.

Very truly yours,

John F. Truesdell,
Chief Field Counsel.

APPENDIX 12

GILA RIVER ADJUDICATION SUIT, ARIZONA

Memorandum for the Commissioner of Indian Affairs and the Solicitor of the Interior Department

John F. Truesdell, March 26, 1934.

1. In trying to settle this suit through the entry of a consent decree it may be necessary to ask the court to dispose of the case, through dismissals without prejudice or by some other means, as to certain parties who will not join in the general consent. The right to such disposition is not clear. Ordinarily we would have to proceed with the trial. But in a case of the magnitude of this one when all but a few of the numerous parties desire to settle and when to proceed with the trial would take a great deal of time and be expensive and in the end might not achieve results obtainable now by a settlement, we think the court has the power and would have the inclination to aid the settlement in the way suggested.

In presenting the matter to the court I think the Government's representatives ought to be able to say that the settlement has the approval of both the Department of Justice and the Department of the Interior; and that, if the disposition of parties asked for is made, the Attorney General and the Secretary of the Interior on behalf of the plaintiff, the United States will join the remaining defendants in consenting to the entry of the decree formally and through their signatures.

2. This suit, contemplated before the passage of the San Carlos Act which provided for stored water for the Indian land and such White lands as could be taken into the San Carlos Project, was decided upon as necessary and was instituted by the Department of Justice in 1925, which

was after the passage of the San Carlos Act. Its purpose was and is to define rights in the Gila river, exclusive of its tributaries, from the point where that river is joined by the Salt River, at the foot of the Gila River Indian Reservation, to a line parallel with and ten miles east of that which divides Arizona from New Mexico.

3. The chief difficulty has been to reconcile the rights and equities of the United States on account of the Pima Indians and their reservation, and rights of the United States on account of its Florence-Casa Grande and San Carlos Projects, with the rights and equities of some 40,700 acres of land in the Safford and Duncan Valleys which are situated above the San Carlos Reservoir, and which we commonly call the Upper Valleys.

Irrigation in these Upper Valleys has been going on since 1872. Based upon it, substantial communities have been established. But the important thing is that all this has been going on in disregard of the prior rights to water of Pima Indian lands and White lands situated farther down the river.

The San Carlos Reservoir, which has been constructed for the benefit of these lower Indian and White lands now contained in the San Carlos Project, more than compensates for the out-of-turn drafts on the stream of these Upper Valley lands, Also in estimating the water supply available for the San Carlos Project, measurements of the river flow were made below these Upper Valleys and so after the river has been depleted by the irrigation there.

In settling the suit it seems fair, and within the broad intent of Congress, in providing money for the San Carlos Project, to make the San Carlos Reservoir inure in part to the benefit of these Upper Valley lands. This can be done

by allowing those lands to use water somewhat as they have in the past byt [sic] under definite restrictions and only to the extent that the reservoir during the yearly irrigation season supplies stored water for the San Carlos Project lands.

Accordingly a plan, called the "substituted storage plan", has been worked out and is embodied in the proposed decree. Briefly it allow [sic] the 40,700 acres of Upper Valley lands to divert from the stream in the order of their own priorities, or in part as may be agreed between the Safford and Duncan Valleys, and within the duty of water fixed by the decree, in disregard of the prior rights of the San Carlos Project but limited to the extent that water has bee [sic] stored in the reservoir during the year and limited also to an annual net draft of not more than 120,000 acre feet.

4. The principal advantages of this settlement to the Indian and White lands of the San Carlos Project are: (a) it settles their rights in the natural flow of the stream to an extent and with priorities deemed satisfactory and perhaps much better than could have been obtained if the suit were fought out; (b) It defines the Upper Valley lands having water rights and limits their uses, and by giving the San Carlos Project a storage right as of 1924, does much to protect that project from future unwarranted encroachments on the stream above the project lands. And the chief advantages to the Upper Valley lands are: (a) the removal of the menace of enforcement of prior rights below as long as the San Carlos Reservoir storage conditions are met, thus giving those lands a reasonably secure water right; and (b) bringing them into an ordered administration with San Carlos Project lands and so giving them a

sort of recognition and perhaps preference if further protection for them should be found feasible in the future.

5. The settlement has been discussed so much and has been so fully reported upon from time to time in the past that I think only a few features of it need to be touched upon here. The full draft of the decree made by Mr. Morton as Special Assistant to the Attorney General in charge of the suit for the Department of Justice, with Mr. Walter Elliott's able assistance throughout and especially on the long schedules of rights and priorities, remains the basis of what we are presenting now. Only a few and, in my view, unimportant changes have been made. These are described and discussed at length in the memoranda referred to in the general stipulation for settlement and in subsequent letters and other reports.

6. The Indian rights given by the decree are so important that I wish to speak of them again briefly.

7. The amended bill of complaint claims for the Pima reservation a first right with immemorial priority for all of the so-called primary allotments (those intended to be irrigated) which amount to some 50,000 acres. This claim was made on the sound legal principle of an implied reservation by the United States of enough water to carry out its purpose in reserving the land, Under this principle the amount of water needed and intended to be reserved becomes the question for the courts to determine. In deciding this important question the main factors are: the area on the reservation which could be irrigated from the stream, the Indian population at the time of the reservation and at the time of the trial; their aptitude for farming the quantity of land they have irrigated in the past; their

own and the Government's intentions as to future irrigation as shown by irrigation works and the like, etc.

In the case of the Pima reservation, these tests were met satisfactorily. The Pima always had been irrigators and the plans of the Government for actually irrigating the 50,000 acres were elaborate and were being prosecuted vigorously.

8. When requests to settle the case came from the Upper valley defendants and the Government in the field had instructions from the two departments to settle it, the matter od [sic] determing [sic] the extent of the Government's reserved rights for the Pimas' reservation and also for the Apaches' reservation became one of negotiation. Those things had to be determined in the light of the forgoing principles and with regard to the rights of others and with a view to arriving at a fair and workable decree.

In the Pima case the government men had roughly three possibilities for the extent of the early reserved right: the something like 12,000 acres the Indians seem always to have irrigated; the 23,000 acres or so of land they had irrigated in the aggregate but not all at one time; the 35,000 acres contemplated to be irrigated under the Florence-Casa Grande Project; or the full 50,000 acres claimed.

The 35,000 acre figure was chosen as the one best fitting the conditions.

9. The Apache claim presented difficulties. There, neither the Indians, nor the Government for them, were irrigating from the river, and irrigation there from that source in all the past has not been great; the Indians did not have an irrigating history; and very important and discouraging to

the Government side was the physical situation which precluded irrigation from the river at a reasonable cost and the fact that the Government not only was prosecuting no plans for such irrigation but had none.

The claim was made, as I recall it, for the total reasonably irrigable area, 3,000 acres needing 37½ second feet of water.

As will be seen, the Government had a weak case. If the court had had an opportunity to rule on it nothing might have been given, especially unless a reasonable plan for using some amount of water could have been auggested. [sic] Since none such had been adopted, apparently, either before or after the San Carlos Act, the case as a case was weak.

The determinations of the settlement I think especially advantageous. The reservation is given enough water for 1000 acres with a priority second only to that of the Pimas. Also, since there is so little prospect of the right being usable due to the physical situation of the lands on the reservation and immediately above it and the requirement of law that changes of point of diversion, etc., can only be made to the extent that they do not injure others, a plan was devised and is embodied in the decree whereby the Upper Valleys may get rid of the menace of this right if the Indians wish to sell it.

Under this plan the right would be held merely as a support to San Carlos Project and Upper Valley rights as against other claimants in the stream, but would not be used otherwise.

10. Under the idea that the San Carlos Reservoir should be made to inure in part to the benefit of the Upper

Valleys, this benefit, which is given by the substituted storage plan, would have to be paid for: (a) by the lands in the San Carlos Project which must pay for the reservoir, (b) by the United Stated in providing the money for the reservoir either at low or no interest and a part of whose plan probably was to protect these Upper Valleys or (c) by the Valleys themselves.

Accordingly the Government field men suggested a payment of $10 an acre by those Upper Valley lands which would amount to $407,000. This payment was never regarded by the Government men as a very desirable thing. It would not go far in paying for the reservoir and it would tend to give the Upper Valleys a stronger claim in any further developments of the river then [sic] they would otherwise have. Accordingly, when the Upper Valleys, in later stages of negotiations, refused firmly to make this payment it was not insisted upon. Later developments looking to flood control on the upper parts of the river tend to show that this decision was a wise one.

11. The plan of allowing the Upper Valleys to get rid of the menace of this San Carlos Indian right, if the Indians cannot use it themselves and for that reason or otherwise want to sell, of course need not adopted. Equally of course the suggestion of a price was not meant to preclude asking more. Also the provisions of the decree with respect to this right are meant to enlarge its usefulness and salability and provide a market for it beyond those the Government representatives thought ordinarily would be available.

12. That feature of the decree which embodies the settlement of water rights made by the Secretary of the Interior under the act of 1916 and the designations made thereunder, and made by the formation of the Florence-Casa

Grande Project and the San Carlos Project with their appropriate contracts, is of course retained in the latest draft. It is mentioned here because of its importance.

The pleading in the amended complaint as it affected the Pima reservation was directed to supporting a large early right for the Indians and making it available where it could be best used. The legislative authorization was to construct the San Carlos Reservoir "for the purpose, first, of providing water for their irrigation of lands allotted to Pima Indians on the Gila River Indian Reservation, Arizona, now without an adequate supply of water * * * ". The Government men did not consider that any lands on the reservation already were supplied adequately. So they felt that all primary allotments should be given the benefit of both the early priorities belonging to the reservation and the stored water, and that the location of allotments should be changed when necessary to make that physically feasible.

In that way each allotted Indian would have one of his two allotments under the stored and pumped water of the project and with a share in the reservation's earliest rights. He would also enjoy the other benefits of the project including the diversion and distribution system, drainage, etc.

The [sic] bring this about it was deemed necessary to devote the old rights in the Gila as distinguished from the Salt, from which the Maricopa lands get their water, to the project lands. This leaves the irrigation on the reservation from the Gila below the project lands confined to technically secondary allotments and with later priorities.

I think this decision was a wise one and in fact the only wise and practicable one in view of the implied

character of the right that was being set up and the necessity, in fairness, to give all the allottees a share of the project's benefits.

I also think the plan adopted will work well. The valuable but relatively small amount of irrigation on the reservation below the project gets its water supply from reoccurrence of water in the bed of the stream, return flow and flows coming in below the project. As against the Indian and White lands in the project, I think there can be uses protected and made of first importance if the individual owners wish in respect to their allotments in the project and if that should ever be necessary. And as against claimants below the reservation I see no difficulty in defending those particular uses. Return flows after the project Indian lands are under full irrigation should give these lands below a greatly increased supply. The use of such flows to extend the acreage there should only be made, however, after carefully considering the waters [sic] quality, its permanence, and the reservation's rights to it as against diverters below the reservation.

13. The substituted storage plan is applied in part to the few non-project water rights between the Coolidge Dam and the Ashurst-Hayden Diversion Dam. The payment provided for in Mr. Morton's draft has been eliminated to conform to its elimination as to the Upper Valley lands.

14. As to the power of the Secretary of the Interior and the Attorney General to consent to the entry of this decree, containing as it does the substituted storage plan and the power of the court to enter it on such consent there is perhaps some room for doubt. As to this, a purely legal question, the Department of Justice and the Court are the better judges. It seems to me, however, that the Act of May

18, 1916, which gave the Secretary of the Interior the power to settle rights in water to be diverted at the Ashurst-Hayden Diversion Dam; the San Carlos Act, the 5th section of which authorizes the Secretary to do all acts necessary to carry that statue into effect; the general power of the Secretary over Indian Affairs; the larger inherent powers of the Attorney General to conduct and settle litigation in which the United States is involved; all coupled with the court's own authority, make the decree a proper one to enter.

I have no doubt Congress itself would authorize it if that were necessary.

15. In a suit, of the magnitude, as to the numbers of persons interested and the cumbersomeness of this one, there is always great difficulty in handling the parties. If we followed ordinary rules strictly, doing so would take unending time and probably would be futile.

Still the parties must be disposed of and substantial rights to be heard must be protected.

In this case we have difficulties in arranging the settlement as such as to contain parties whose interests in general are on the side of the United States but where there is some doubt of the propriety of the United States assuming to represent them. Here the questions are legal ones and the solution, if to be found in legal procedure, is a legal matter. Consequently here it is for the Department of Justice to decide. I have discussed the matter somewhat at length in a letter of mine of March 13, 1934, to Mr. Ward, and herewith enclose copies. My letter suggests solutions.

16. As to further work on the settlement I think what is needed, after I have gotten off my recommendation for

further designations of lands in the San Carlos Project, a thing I expect to be able to do with [sic] the next ten days, is mainly court procedure which is for the other department, coupled with such help as we of the Interior Department, and the men of the San Carlos Irrigation and Drainage District, and Mr. Elliott representing the Upper Valleys, can give in the way of getting people to sign stipulations and the like. Also, I take it we are perhaps needed to stand by in case any explanations of the workings of the substantial parts of the decree from a practical standpoint are needed, and in case any need for rewording those parts arises.

17. We all, in the field, regret that we cannot now present the decree in final form and in one document. That is physically impossible at this stage. We, hope, however, that Mr. Morton's draft with the memoranda mentioned above, and Mr. Elliott's compilation of the wording of the substance of the decree in its latest form minus the priority schedules, will be sufficient for present purposes. Mr. Elliott some time ago sent Mr. Wathen copies of this compilation and has just given Mr. Monahan one.

18. The final decree will be in the form and substance thus indicated except for last moment minor corrections, made only to express better the intent of the present form and any minor changes made necessary to meet the stipulations or the lack of them still outstanding.

What we need to know is whether this settlement meets with the approval of both departments and whether the Attorney General and the Secretary of the Interior will sign the assent to its entering when the full draft with disposition of parties can be presented.

19. I recommend this settlement, and think it would be unwise to attempt to change it in substance at this late stage except for weighty reasons.

Respectfully submitted,

John F. Truesdell
Acting District Counsel

JFT:md

Copy by F.S.

APPENDIX 13

IN THE DISTRICT COURT
OF THE UNITED STATES

FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA, Plaintiff, vs. GILA VALLEY IRRIGATION DIST., ET AL, Defendants.	IN EQUITY NO. E-59-GLOBE MOTION TO DISMISS CERTAIN DEFENDANTS

Comes now the plaintiff, through its solicitor, Clifton Mathews, United States Attorney, and informs the Court that the following named persons were made parties defendant to this action through inadvertence and mistake, to-wit:

> Castlio Ditch; Thomas Crabtree; Ed Elrage; Dale M. Garden; Jensen Brothers; J.B. Johns; F. Vernon Jones; William L. Keppler; Randall Lunt; Vernon Lunt; M.J. McClaren; Hugh McKeen; William Milligan; Alfred Mortenson; Nichols & Company; Tomas Ponce; Serano R. Sexton; Ernest D. Shade; C.M. Short; Frank Shriver; A.R. Snyder; S. Stewart; T.L. Stockton; J.A. Suydam; Luther T. Sweeting; Miss E.A. Swofford; O.F. Swofford; Bonnie Ulrage; J.F. Wardner; and W.F. Willis.

The Court is also advised that said persons are not necessary parties to this suit for the reasons:

1. That all but six have no interest of any sort, and that the other six are outside the scope of the suit as defined in the Amended Complaint.

2. That none of them have filed, answered or appeared in any way in said action.

The Court is further advised that the following named parties defendant were also brought into the action through inadvertence and mistake or because they have transferred their interests to others who are made parties defendant, and that they and each of them are not necessary parties herein and should be dismissed, to-wit:

W.B. Barham; J.M. Biddle; Mary W. Bradshaw; Jackson Branaman; Martha M. Brockway; Fred D. Carpenter; E.D. Chandler; Dessa Harbison; Jim Harper; Jacob Helfenstein; A.S. Henry; Mrs. Alice Huntsman; John A. Johnson; A.E. Keoler; T.A. Lonergan; Clara B. McFarland; Gordon McMurray; William C. McNatt; R.B. Maley; Martha M. Merrill; Estate of Lizzie B. Murphy, W.F. Murphy, Sr., Administrator; John Nash; Ansel Phelps; Georgiana Phelps; George W. Sheerer; Chas. D. Stahlberg; Glodine Stahlberg; Phoebe E. Templeton; Estate of Jose Vasquez, Charles F. Bennett, Administrator; Albert Warren; Alice E. Nixon; Virginia Griffin; Horace J. Johnson; Mary Johnson; Lula O. Lockerd; and John C. Swan.

The Court is also informed that the following persons, to-wit:

Henry W. Blough, John F. Brown; Fred E. Gack; John MacGregor Goodale; Frank E. Hamilton; Frederick K. Kratzka; J.T. Lewis; James F. McManis; George W. Morrell; John O'Brien; Margaret T. Randall; Jennie Roberts; Earl F.

Smiley; Ole H. Smith; A.W. Sydnor; M.E. Templeton; Bart Vidans; Fannie Wallrich; W.G. Williams; and S.H. Wynn

were made parties defendant, but have never appeared or answered, and that since they were made parties defendant, their lands have been embraced within the San Carlos Irrigation and Drainage District; that by contract with the United States their and each of their lands have been taken into and designated in its San Carlos Indian Irrigation Project, and that their interests are therefore represented by the said district and the United States, the plaintiff herein, and their and each of their rights are set up and provided for in said decree by reason of such representation, and that they and each of them are therefore not necessary parties defendant herein.

The plaintiff also advises the Court that, the Estate of Della Tharp, Edward Tharp, Administrator and the Estate of James Tharp, Edward Tharp, Administrator, were made parties defendant herein. That neither of said estates as parties defendant or otherwise, have answered. That their and each of their lands were by contract made a part of the Florence Casa Grande Project; that their interests have been and are represented in this action by the Florence Casa Grande Water Users' Association and the United States, the plaintiff; that their interests are provided for and set up in the Priority Schedule in the proposed decree.

Basing its motion on the records herein and on the grounds hereinbefore stated, the plaintiff moves that the Court make an order dismissing this action and the Amended Complaint without prejudice as against the following persons:

Castlio Ditch; Thomas Crabtree; Ed Elrage; Dale M. Garden; Jensen Brothers; J.B. Johns; F. Vernon Jones; William L. Keppler; Randall Lunt; Vernon Lunt; M.J. McClaren; Hugh McKeen; William Milligan; Alfred Mortenson; Nichols & Company; Tomas Ponce; Serano R. Sexton; Ernest D. Shade; C.M. Short; Frank Shriver; A.R. Snyder; S. Stewart; T.L. Stockton; J.A. Suydam; Luther T. Sweeting; Miss E.A. Swofford; O.F. Swofford; Bonnie Ulrage; J.F. Wardner; and W.F. Willis.

Also that an order of Court be made dismissing the suit and plaintiff's Amended Complaint without prejudice as against the following defendants:

W.B. Barham; J.M. Biddle; Mary W. Bradshaw; Jackson Branaman; Martha M. Brockway; Fred D. Carpenter; E.D. Chandler; Dessa Harbison; Jim Harper; Jacob Helfenstein; A.S. Henry; Mrs. Alice Huntsman; John A. Johnson; A.E. Keoler; T.A. Lonergan; Clara B. McFarland; Gordon McMurray; William C. McNatt; R.B. Maley; Martha M. Merrill; Estate of Lizzie B. Murphy, W.F. Murphy, Sr., Administrator; John Nash; Ansel Phelps; Georgiana Phelps; George W. Sheerer; Chas. D. Stahlberg; Glodine Stahlberg; Phoebe E. Templeton; Estate of Jose Vasquez, Charles F. Bennett, Administrator; Albert Warren; Alice E. Nixon; Virginia Griffin; Horace J. Johnson; Mary Johnson; Lula O. Lockerd; and John C. Swan

upon the ground that they have no interest and that they are not necessary parties defendant herein.

The plaintiff also requests the Court to make an order dismissing the suit and Amended Complaint as against the following named defendants:

Henry W. Blough, John F. Brown; Fred E. Gack; John MacGregor Goodale; Frank E. Hamilton; Frederick K. Kratzka; J.T. Lewis; James F. McManis; George W. Morrell; John O'Brien; Margaret T. Randall; Jennie Roberts; Earl F. Smiley; Ole H. Smith; A.W. Sydnor; M.E. Templeton; Bart Vidans; Fannie Wallrich; W.G. Williams; and S.H. Wynn

upon the grounds that they have never answered or otherwise made a defense or plea to the Amended Complaint and that they are not necessary parties defendant, as individuals, because they and their interests are represented herein by the San Carlos Irrigation and Drainage District and the plaintiff herein, all as stated hereinbefore.

Plaintiff also moves the Court to dismiss this suit and Amended Complaint herein as against the Estate of Della Tharp, Edward Tharp, Administrator and Estate of James Tharp, Edward Tharp, Administrator, upon the grounds that they are not necessary parties for the reasons hereinbefore in this motion stated.

Dated this 30th day of March, 1935.

/s/ Clifton Mathews
Clifton Mathews, Esq.,
United States Attorney,
Solicitor for the plaintiff

APPENDIX 14

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA,	)	
Plaintiff,	)	IN EQUITY
vs.	)	NO. E-59-GLOBE
GILA VALLEY IRRIGATION DISTRICT, ET AL,	)	ORDER DISMISSING CERTAIN DEFENDANTS
Defendants.	)	

This cause coming on to be heard upon motion of Clifton Mathews, solicitor for the plaintiff, requesting the dismissal of certain parties defendant from this action, for the reasons among others, that; the parties in said motion named and hereinafter named were made parties defendant, through inadvertence and mistake, and

That their, and each of their, interests, if any, in the issues involved in this action are outside the territorial scope of this suit as it was and is defined in the Amended Complaint, and

That said and each of such parties are not necessary parties defendant to this suit, and

That each of the said and hereinafter named parties have, through their attorneys, stipulated that they be dismissed as parties defendant.

The Court, being fully advised in the premises, finds that each and all of the hereinafter named parties are not necessary parties defendant herein, and accordingly it is ordered that those certain defendants hereinafter listed

and each of them be and they are hereby dismissed as parties defendant in this cause without prejudice.

The parties to whom this order applies are:

S. B. Blake; Cluff & Mitchell; Colvin-Jones Consolidated Ditch Co.; John H. Davidson; W. P. Ferris; Jose Gonzales; T. Hinton; Layton & Ison; James Layton; E. D. McEuen; Roy A. Martin; Ed Moody; J. C. Norton; George A. Olney; Asa Packard; N. E. Platt; W. E. Posy; S. A. Powell; Pursley & Hash; Mrs. Mary Reynolds; Bert E. Rose; Smithville Extension Canal Company; Cinaco Tolles; E. L. Tidwell; Louis Voelckel; W. J. Walton; T. W. Wamslee; Estate of Webster; F. A. Webster, Administrator; Estate of J. R. Williams; B. D. Wilson; Young & Ridgway;

Also:

Bank of Duncan; D. E. Barlow; J. W. Becker; Billingsley Canal Company; R. T. Bishop; Harry H. Boyer; Burcher Ditch Company; Estate of W. C. Cheatham; Edward C. Cole; Consolidated Canal Company; J.H.T. Cosper; Cosper-Wilson Canal Company; Ethel M. Cunningham; E. C. DeMoss; Double Circle Cattle Company; Thomas Edwards; Bonnie Elrage; Mangus Elrage; Mrs. Geo. J. Filleman; J. J. Filleman; Franklin Canal Company; Fred J. Fritz; Mrs. Katie Fritz; Furr & Blain; Harve X. Gatlin; Gila Ranch Company; Greenhorn Ditch Company; Greenhorn Irrigating Canal; County of Greenlee; O. C. Greenwell; Ole Hagan; William F. Hagan; S. P. Hale; Francolle Heywood; Mrs. Clara Hicks; County of Hidalgo; Hill Ditch; Francis M. Hodges; Lettie F. Hunt; M. J. Jensen; M. L. Jensen; D. L. Johnson; F. E. Johnson; R. S. Johnson; A. L. Jones; J. H. Jones, Sr., Estate; Martin & Pearson Ditch; Martin &

Pearson Irrigating Canal Company; Arven Mortensen; T. J. Nations; G. C. Payne; C. V. Peery; T. M. Peters; Dell M. Potter; Fred Powell; R. Richardson; Romney Brothers; Romney & Lunt; Rucker Ditch; School District No. 30; J. M. Smolloy; A. F. Smith; The Estate of Spoon, Ire L. Spoon, Adm.; A. G. Stevenson; W. R. Stevenson; Sunset Irrigating Canal Company; W. Plune Tibbots; H. P. Trainor; Virden Ward; Ward & Courtney Dam Company; T. M. Williamson; State of New Mexico.

Also:

Phelps Dodge Corporation; Arizona Copper Company;

Also:

Morenci Water Company;

Also:

Aztec Mutual Canal Company; James LeRoy McCarthy; Richard E. Geyler; Frank C. Elwell.

It is further ordered that the answer of each of said defendents [sic] who may have filed one herein, be and the same is hereby dismissed without prejudice and shall stand as if never filed.

Dated this 30th day of March, 1935.

/s/ [Illegible] Jacobs
Judge of the United States
District Court, in and for
the District of Arizona.